Studies on Diversion

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NOTICE

This book contains two sections. The first consists of a research report prepared for the Law Reform Commission of Canada. It contains a summary of the East York Community Law Reform project and the accompanying papers that make up that study.

The second part consists of a Working Paper of the Law Reform Commission of Canada. This includes the philosophy of the Commission and recommendations for changes in the law. The proposals in this section represent the views of the Commission.

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FOREWORD

In formulating its research program, the Law Reform Commission of Canada was conscious of the need to develop projects that would provide a living laboratory for the purpose of gaining first-hand information on the actual working of the criminal process, as well as for testing out new ideas. The accounts presented in this volume have grown out of what is already widely known as "The East York Study". The Commission was fortunate that Dr. John Hogarth, who was then a professor at Osgoode Hall Law School of York University, had developed an interest in a framework for studying the criminal process in relation to community needs and resources.

Those familiar with action research know the amount of organizational talent necessary for securing trust, cooperation and the kind of information which would provide a basis for the kind of law reform to which this Commission is committed: reform of the working of law and not only its wording.

This project has provided many insights, but as with any live and living situation it is not sufficient to gather facts and experiences: they also have to be interpreted. An account of the theoretical framework has already been given by Dr. Hogarth in our volume on Studies in Sentencing. The present volume carries the title Studies on Diversion since the papers presented form a background to our working paper on diversion. The volume attempts to describe the major facets of the project and the kind of inferences that might be drawn. The papers have been developed in various degrees by the project staff in conjunction with Commission staff, and inevitably some of the material had to be condensed from extensive working notes. The accuracy of the accounts and adequacy of interpretation rest with the contributors and they do not necessarily represent the Commission's views; our views are expressed in the working paper on diversion.

Any account which attempts innovative solutions faces problems in presentation. The papers in this volume are no exception. Some accounts are straightforward; some are complex because of new or unfamiliar reasoning. We should point out, however, that the concept of diversion has now become a catchword with vast and dangerous oversimplifications. There is no question that we have to arrive at new solutions to the problems of crime. Experience has shown, however, that if these solutions are not well thought through, they may exacerbate rather than alleviate problems in the

traditional process. Nevertheless, we do attempt in our working paper to give a simplified and consistent account of the meaning of diversion.

Dr. Hogarth is acknowledging separately the many contributions made to the project. We want to thank him for the initiative he has shown, Anne Scace for giving unlimited amounts of cooperation, Cal Becker for giving shape to this volume, Keith Jobson and the staff of the Sentencing Project for their patience in studying draft after draft and Mark Krasnick for seeing the volume through to its completion.

ACKNOWLEDGEMENTS

As with most research programmes, the East York Project owes its shape and its significance to the skills and resources of the many people who joined forces to develop, implement and assess it. Those to whom I am most grateful for their stimulation, their insights and their encouragement are of course the members of the project staff itself. Among them were Anne Scace, without whose unique personal skills the project could not have developed and maintained its rapport with the police and the community they serve; Jesse Dean, who lent his considerable energy and imagination to the task of explaining the project to the community; Marianne Packer, who ably presided over the project headquarters at 570 Main Street and who conscientiously collected, maintained and organized the project's records of criminal occurrences; Wendy Hartley, who took up residence at 570 Main Street to receive reports from police officers on night duty within the project area, contributed extensively to the project's Youth Bureau Study and herself subsequently became a policewoman with the Metropolitan Toronto Police; Cal Becker, who applied himself to the difficult tasks of assimilating and interpreting the criminal occurrence patterns recorded within the study area, and who assumed major responsibility for completion of the report on the East York Project; Deborah Tannenbaum, who shared with the project the benefits of her experience with the local Neighbourhood Information Centre and provided a valuable perspective by locating people's problems with the police in the context of their general life problems; Graham Reynolds, who assumed responsibility for organizing and analyzing the substantial volume of data collected during the course of the Youth Bureau Study on the police use of discretionary or non-charging dispositions with juvenile offenders; David Price, who performed much of the initial work of imposing some measure of coherence upon the project's criminal occurrence files and thereby greatly facilitated their subsequent analysis; and Marshall Green and Norman Lipson, who tramped the streets of East York, knocking on hundreds of doors to conduct the public attitude survey undertaken in conjunction with the project.

At least as valuable as the members of the project staff, however, were those people within the Metropolitan Toronto Police who contributed so generously of their time and their efforts. Had we not had constant support and encouragement from Chief Harold Adamson, Deputy Chief Jack Ackroyd, and Inspectors Fielding and Gibson, the project would doubtless

have been without the consistently high level of cooperation which was extended by all the officers and staff at 54 Division. The 54 Division Community Service Officers, Constables Bill Stanton (now a patrol sergeant), Winston Melcher and David Penney, were similarly invaluable for their efforts in assuring us of complete access to the records of police interventions within the study area, and in interpreting the project to their fellow officers so patiently as to secure for the project the cooperation of the entire division. I am also very grateful to Inspector Ferne Alexander of the Metropolitan Toronto Police Youth Bureau for suggesting and coordinating the study of police discretion practices in the disposition of juvenile offenders, and for making available to the project two very capable policewomen to assist in that task, Sylvia Gossman and Jean Boyd. I'd also like to thank the Department of the Attorney General of Ontario for assistance and support throughout the formulation and implementation of the project.

Lastly, I must express my appreciation to the community of East York for permitting yet another research project to examine their problems and their solutions to those problems. I am particularly grateful to the staff of the Neighbourhood Information Centre, Jean Watson, Natalie Sherban, Joan Harvey, Dorothy Sommerville, Joyce Fordham and Elsie Attard, for the generous way in which they shared their insights about their community.

John Hogarth, Director
East York Community Law Reform Project

SYNOPSIS

I. AIMS AND PURPOSES

The East York Community Law Reform Project, funded under the auspices of the Law Reform Commission of Canada, represented a novel experiment in legal research. It was the product of a conscious attempt to extend the process of law reform, traditionally an undertaking reserved to legal professionals, to those most directly affected by the administration of criminal justice—victims, offenders and police officers. Moreover, the format of a community-based law reform project opened the province of law reform to participation by the community itself, both individually and through the various organizations which represent and service it.

By locating the East York Project at the community level, it was possible to integrate the process of law reform with local concerns, to monitor conflict within the community and to observe the consequences of its definition, management and resolution. By connecting the research vehicle to a specific and identifiable community base, it was possible to commence an inquiry into the situations which give rise to the use of the criminal process, to evaluate the effectiveness of existing methods of crime prevention and control, and to explore the potential for alternative modes of dispute resolution.

II. FACILITIES

The project was located in an area of East York which corresponded to the Metropolitan Toronto Police patrol area of 5411, a twelve by eight block area bounded by Main Street on the west, Danforth Avenue on the south, Victoria Park Avenue on the east, and the Massey Creek Ravine on the north. Its population of approximately 8,100 might fairly be described as primarily working class, with an average family income of $9,300.00 and an average individual income of $4,300.00. Until recently a relatively stable, Anglo-Saxon, Protestant community, its ethnic and religious composition is now changing, chiefly through the assimilation of southern and central European immigrants. As of the 1971 census, the area's population was 64% of British origin, 15% southern European, 10% central European, 3% eastern European, 3% Asian and 2% of West Indian origin, with Greeks, Italians and West Indians predominant among the new arrivals to the area. This transition has been accompanied by the construction of a range of apartment

accommodation, from Ontario Housing Corporation townhouses to privately-financed highrises, in a neighbourhood that was previously predominantly comprised of modest, single-family dwellings.

Although the area's prior homogeneity is being changed by a measure of ethnic and religious diversity, it seems nevertheless to retain many of the same social characteristics which previously described its Anglo-Saxon residents. It was this feature of gradual transition, together with an absence of extreme variations in socio-economic status, which commended this area to an analysis of its social relationships and its patterns of conflict resolution.

Following selection of the project area, contacts were made with the Metropolitan Toronto Police, the local Neighbourhood Information Centre, the executive of the local ratepayers' association, and a number of the social agencies which service the community to apprise them of the purposes of the project and to solicit their advice and assistance. After several months of such preparation, the project headquarters were opened at 570 Main Street on May 15, 1972. Although on the western fringes of the project area, the location of the project offices provided convenient access to the project by the community, their police and the project personnel.

During the initial three and one-half months of the project, the offices were open on a 24-hour, seven-day-a-week basis. The police officers selected at the divisional level to patrol the district were familiarized with the project and arrangements were made to ensure that each officer reported in to the project as part of his shift responsibilities. All matters involving intervention by the police during the course of an individual police officer's shift were thus recorded at the project headquarters. As a further control on the self-reporting by the police, arrangements were made at the divisional level to ensure that the project was provided with all information pertaining to matters of a criminal nature within the patrol district. These latter arrangements ultimately involved a working arrangement which permitted a member of the project staff to have virtually unrestricted access to all relevant records both at 54 Division and at the Metropolitan Toronto Police central records department at 590 Jarvis Street. It thus became possible, in addition to the other aspects of the project, to monitor the procedures by which the police assembled their records of criminal activity within the patrol district of 5411 for the one-year period in which the project was in operation, May 15, 1972 to May 14, 1973.

III. PROJECTS

A. Service

To assure the project of a viable working relationship within the community, it was felt necessary to include a conspicuous service component, particularly during the initial phases of the programme. Personnel

were accordingly engaged to inform the area residents of the purposes of the project and to encourage their participation, individually and collectively, in the process of legal reform.

1. *Community Organization*

One project member assumed responsibility for developing a constituency within the community which would be able to identify with and make use of the facilities available through the project. To this end, he developed close working arrangements with the local Neighbourhood Information Centre and the Metropolitan Toronto Police Community Service Officers assigned to the area, eventually building up a clientele to whom he was available for assistance in individual and community problem-solving. Over a period of time, as he came to be seen in the community as a problem-solver or a "facilitator", he was able to develop and share with other project personnel considerable insights about the range and efficacy of the mechanisms available at the community level for localized problem solving.

2. *Neighbourhood Information Centre*

A second project member, associated both with the East York Project and the University of Toronto's Centre for Urban and Community Studies, worked directly with the Neighbourhood Information Centre, assisting in the referral of people with problems to resource agencies. In the process, she was able to provide a sociologically informed analysis of the experience of trouble in the south-east area of East York. By conducting an examination into the nature of trouble, the ways in which trouble was perceived and defined, and the types and routes of help-seeking that formed part of the trouble experience, it was possible to develop a sociological profile of the kinds of problems experienced by people in the community at large. Problems involving the police were investigated, but were not the primary focus of the analysis, which itself was aimed at establishing a general context for examination of the process of having problems and seeking help.

3. *Police Support and Resource Assistance*

The major portion of the responsibility for securing the participation and cooperation of the local police was undertaken by a third member of the project. This project member was in effect attached to the police, working closely with police officers at all levels, from patrolman to community service officer to inspector to the Deputy-Chief and Chief of Police themselves. During the initial stages of her work, no attempts were made to effect direct changes in police procedures; rather, her function was confined to monitoring and documenting the characteristics of the performance of the police function. In the monitoring operation, however, it was possible to acquire an

appreciation of the potential for implementation of changes in police practice, offering resource assistance and support for such changes when they were undertaken spontaneously by individual police officers or as a consequence of interaction with the project personnel. Specifically, her contribution involved advice to police officers about the alternatives to laying criminal charges in the event that referral to a social agency appeared appropriate—impressing, in other words, the idea upon the police that disposition by routes other than charge merited consideration by them in appropriate circumstances, and performing something of a switchboard role in apprising them of the availability of community resources to receive such referrals.

As a consequence of this close association with the police, the project was assured of a full and free range of information sharing between police officers and project personnel, permitting a unique opportunity for the analysis of all phases of police operations. This analysis extended to an examination of the differential between social expectations of the police and the policeman's appreciation of his role, the need for additional resources to support the police in the performance of their function, and of the police perceptions of the other sectors of the criminal process. As a result, it was possible to develop a comprehensive assessment of the police perspective of their relationship to the community and the other hierarchies in the legal system.

B. Research

Having established the viability of the East York Project through its service components, the members of the project were then able to undertake a series of studies to fulfil its research programme. The themes around which the research programme was organized were as follows: (1) to describe the criminal law in action in a typical urban setting, commencing with the complainant's or victim's initiation of the process, and concluding with the trial of the accused person; (2) to identify problems in the law and its administration at each stage of the criminal process; and (3) to explore the potential for developing alternative methods of handling the problems which might arise and, whenever possible, to test such alternatives in terms of specified criteria.

1. *Public Attitude Survey*

A public opinion survey was undertaken during the early stages of the project to assess local attitudes to crime, victims, offenders and law enforcement. This provided a basis for comparison with other communities in which similar analyses had been conducted. The results of a random sampling of 100 households in the patrol area were for the most part consistent with those which emerged from an earlier study by Malcolm Courtis (*Attitudes to Crime and the Police in Toronto: A Report on Some Survey*

Findings, Centre of Criminology: University of Toronto, 1970) and, to a lesser extent, by André Normandeau (*Les Québécois s'interrogent sur la Criminalité et les Mesures correctionnelles,* Département de Criminologie: Université de Montréal, 1969).

Of particular significance for the purposes of the East York Project was the confirmation of previous findings indicating the presence of a differential between the level of abstract concern about problems of crime and the subjective apprehension of personal victimization, either in the home or in the street. The Courtis study indicated, for example, that approximately 89% of its sample rated the problem of crime a serious one, with 29% of the responses classifying it as a *very* serious problem and 60% designating it a moderately serious problem. Moreover, 74% of the Courtis sample expressed the view that crime, and particularly crimes of violence, were on the increase. Similarly, the opinion survey conducted in the East York area suggested that 91% of the respondents believed that crime was a serious problem, 65% expressing the belief that "crime is one of the most serious problems facing us today". Approximately 78% of the East York sample expressed the opinion that criminal activity had increased over the past ten years. In general, therefore, there appeared to be a fairly broad consensus that crime represented a substantial, though not overwhelming, problem, and that the dimensions of the problem were becoming increasingly more extended.

If the indicia of subjective apprehension of vulnerability to personal attack or property loss are examined, however, the conformation of the responses suggests that most of the respondents have managed to reconcile themselves to whatever level of danger they perceive. Thus, in the Courtis survey fewer than 10% of the sample admitted to being worried about the possibility of their home or apartment being broken into. Some 28% indicated that they worried about their personal safety, but, again, the proportion of those who expressed serious concern was less than 10%. It would appear, therefore, that the respondents were more concerned about the abstract threat of criminal activity than they were about the prospect of themselves being victimized.

The East York study found a marked attitudinal differential between victims and non-victims. Although conventional wisdom might suggest that those having personal experience as victims of criminal activity would be more inclined to a rigid attitude to crime, this proved not to be the case. In fact, victims were generally less harsh in their judgment of the criminal process, more sympathetic to offenders, and generally less impressed with the concept of retribution as a rationale for criminal punishment.

Although far from conclusive, given the scope of the questionnaire and the limited size of the sample, the results of the East York public attitude survey appear to suggest that there are interesting differences, contrary to

conventional wisdom, between those who have been victims of crime and those who have only experienced crime symbolically, as observers of media attention to crime and law enforcement. The results tend to support the suggestion that victims of crime are not the most vocal supporters of the law and order contingent; that non-victims are perhaps more frightened of crime because they have the opportunity to dramatize it, to see the atypical as typical; and that victims with direct experience of crime will conform to the role traditionally assigned to them only when they have experienced a very serious crime which fits their expectations of the typical. If, however, their experience of crime has been what might roughly be termed typical, they discover that the offender was a neighbourhood child or some similarly manageable, essentially harmless individual, and they tend as a consequence to feel less threatened by the prospect of victimization.

There is, moreover, some suggestion in the survey results that victims with direct experience of crime not only have a less rigid set of expectations of the criminal justice system, but also that they were inclined to be resentful of that system as a consequence of their contact with one or the other of the sectors of the criminal apparatus.

2. *People with Problems: Help-seeking in East York*

The study of problems and help-seeking in East York was itself part of two research projects: the East York Community Law Reform Project and the Community Ties and Support Systems Project, the latter directed by Barry Wellman of the Centre for Urban and Community Studies, University of Toronto. The "Yorklea data set", on which the community ties project was based, was collected in 1968 by the Community Studies Section of the Clarke Institute of Psychiatry, directed by D. B. Coates. This data set provided a rich information base on a number of respondent characteristics, including material dealing with relationships with close "intimates", problems and life events, and the people turned to for help with these problems. In addition to the information available through the Yorklea data set, this project also included material drawn from fifteen in-depth interviews with people who had been in contact with the East York Project or the Neighbourhood Information Centre, informal conversations with the East York Project and Neighbourhood Information Centre personnel and the area's community service officers. Although problems located within or peripheral to the criminal justice system were examined, the criminal process was not the primary focus; rather, the research was directed to establishing a more general analytical context into which police-related problems could be placed.

Although the criminal justice system, with its police, courts and corrections apparatus, is the most formal and perhaps the most visible element of the total social defence system, there are nevertheless a host of other, more informal mechanisms directed to the purposes of conflict resolution and

problem management. While it must be acknowledged that there has been a substantial dimunition of the role of the home and the community, informal networks of affiliation continue to play the major role in interpersonal problem-solving and conflict resolution. Despite the pressures of increased urbanization and geographic occupational mobility, most people are part of a close-knit network of relatives, neighbours and co-workers, and these primary groups remain an important source of sociability and support.

Further, there would appear to be comparatively little reliance upon secondary support sources within the formal helping system. The Yorklea data set indicated low rates of resident contact with such agencies as counselling services, clergymen, social workers and psychiatrists. The respondents in the Yorklea sample, moreover, were rarely in contact with the family court or the welfare department. The survey results further indicated that only 6.3% of the sample had been in touch with the police, a figure which comprises both help-seeking and police-initiated contacts. In short, the manner in which the respondents defined their problems and preferences among helpers indicated that the formal helping system did not play a significant role in the lives of most of the people in the community under study. Indeed, the frequency of use of the formal system, including the criminal justice system, was to a large extent determined by the availability and efficacy of informal problem-solving through primary networks of affiliation.

One of the major anomalies revealed by this examination of community problem-solving and conflict resolution patterns is that there are formidable restraints operating to inhibit access by those without primary networks. On the other hand, there are proportionately intensive demands on formal agency capacity by those who are socially isolated but are nevertheless able to establish and maintain agency contacts. The result is that some of those who are without primary support systems monopolize formal agency capacity with their problems; others, because they are without primary support networks, may be deprived of the information and assistance necessary to secure access to intermediate, but more formalized, levels of help. In their search for an agency capable of applying its definition of an appropriate solution to the client's perception of his problem, the socially isolated may well precipitate intervention by the ultimate agency of social control, the criminal justice system.

As a corollary, to the extent that problems can be channelled through primary social networks or through the substitute networks made available through community resource and referral centres, they can be identified, managed and resolved in ways which discourage their intake into the formal social defence system. Problem management and conflict resolution can thus proceed through routes which avoid the labelling tendencies of the formal agencies of social control. Such routes, moreover, serve to neutralize and

normalize problems; their resolution enhances the level of identification with and sense of responsibility within the community.

With specific reference to the criminal justice system, the consequence of intensifying the reliance upon informal social support systems would hopefully be a curtailment in the demands on the social service capacity of the police, and, to the extent that the police control intake into the other sectors of the criminal process, on the courts and corrections apparatus as well.

3. *Conflict Management by the Metropolitan Toronto Police*

The police may fairly be described as the focal point of a range of social and criminal problems, for it is in large measure their responsibility to absorb and channel these problems through the various networks which make up the social defence system. Not only is theirs the primary responsibility for determining the uses to which the criminal justice system is put, but the way in which they exercise that responsibility will necessarily be a significant factor in shaping the patterns and routes for problem-solving and conflict resolution within the social defense system as a whole. Any attempt to understand the dynamics of conflict and its resolution within a community must therefore include within its scope of inquiry the police perception of their social role, their relationship to the community and to the other hierarchies in the legal system.

The most advantageous point from which to conduct such an inquiry is of course from within the police organization itself. This aspect of the research programme was accordingly undertaken by Anne Scace, a former mental health worker with an extensive range of prior experience with the police in the context of mental health problems. Her relationship with the Metropolitan Toronto Police permitted her to work directly with police officers at all levels of authority, participating with them in short-term crisis intervention, intermediate-range casework and police-community relations programmes. In the process, she was able to acquire an insider's appreciation of the police and their resources for managing the range of problems, conflicts and crimes presented to them.

The profile of the police which emerged from this inquiry emphasizes their role as overseers of the public order—a role in which their institutional commitment to law enforcement and order maintenance has been transformed into an operational mandate for conflict management. The police accordingly tend to assess the other agencies almost exclusively in terms of their willingness to support the police in their conflict management role. In this light, the police perceive a wholesale abdication of responsibility by the community and its service agencies: parents decline their responsibilities for maintaining discipline within the home; children's aid societies are reluctant

to provide aid to children in need of care and protection; psychiatric hospitals deny admission to all but the patently deranged; crisis referral centres respond to crises at their convenience, and then only to those which occur between 9 a.m. and 5 p.m. As a consequence, the police, as the most visible, mobile, 24-hour service agency, are forced to accept responsibility for a range of social problems which they are ill-equipped to handle and which detract substantially from their law enforcement and order maintenance capabilities.

A more acute concern than the community's abdication of its social responsibilities and the consequent overload on the police service capacity, however, is the threat to their management of problems within the criminal justice system itself. The police attribute to the other professionals in the criminal justice system a massive indifference, even contempt, for their efforts to manage the conflicts and solve the problems thrust upon them by the community: defense counsel impugn their credibility and their integrity; prosecutors compromise their prosecutions; judges employ their prerogatives of adjudication and sentencing with a capriciousness that defies rational explanation; the corrections apparatus undermines the collective judgments of police, prosecution and judiciary alike with its premature and erratic release programmes; and law reformers ignore the operational needs of the police in their preoccupation with due process and the rights of the offender.

As a result, the community's expectations of the police require them to be peace-keepers and conflict managers across a broad spectrum of social problems, both criminal and non-criminal. Although claims on the social service capacity of the police have been variously estimated to constitute between 40% and 80% of their workload, the police are uneasy in their social service role. They believe this role to be a substantial impediment to the effective performance of their primary responsibilities, both because it consumes an inordinate amount of their institutional capacity and because it compromises the authoritative status they require to fulfil their law enforcement and order maintenance commitments. Moreover, because no tangible criteria exist with which to assess their success or failure in the social service role, the police can neither evaluate their performance nor claim the credit to which they feel entitled for assuming these responsibilities. As a consequence, police performance indices remain primarily geared to criteria—clearance, arrest and conviction rates—which bear no meaningful relationship to the realities of their function.

The Metropolitan Toronto Police have attempted to resolve the competing claims on their capabilities by developing a number of specialized units within the force. Specially selected policemen are assigned to duties as youth bureau officers, community service officers and crime prevention officers. These units are designed to accommodate the spectrum of social problems

which converge on the police without committing them to a permanent social service role as caseworkers. Thus, the officers assigned to these units bring with them the traditional crisis intervention skills of the police, but they tend to go outside the criminal justice system for their solutions, linking those in need of assistance to the community agencies designed to provide that assistance. In the process, the police hope to resolve the dilemma between their express commitment to provide service and the absence of available support systems, skills and resources within the police organization itself. By confining their social service response to short-term crisis intervention and referral, the police hope to encourage community resource agencies to be both more accessible and more responsive, while at the same time facilitating problem management and conflict resolution without overloading the institutional capacity of the police.

4. *Diversionary Dispositions for Juvenile Offenders*

The Youth Bureau was one of the specialized units developed by the Metropolitan Toronto Police to effect an accommodation between police capabilities and the community's needs and expectations. Created to handle a broad spectrum of juvenile-related problems, delinquencies and total family crises, the Bureau's mandate is one which emphasizes the use of referral options outside the criminal justice system. In the expectation that the Bureau's emphasis on discretionary or non-charging dispositions could provide valuable insights for application at the adult level, a joint study, involving East York Project personnel and Youth Bureau officers, was undertaken to examine the community's use of the police as conflict managers and problem solvers in the juvenile context. Indeed, the initiative for this section of the research programme came from the Bureau's commanding officer, Inspector Ferne Alexander.

In general terms, the aims of this inquiry were: (1) to assess the relative frequency of discretionary dispositions (police cautions and agency referrals) and court referrals at the juvenile level; (2) to assess the relative efficacy of discretionary dispositions in terms of recidivism rates; (3) to determine whether variations in socio-economic characteristics from one community to another influenced the frequency of discretionary dispositions by the police; and (4) to measure the level of cooperation between and among the various agencies dealing with juveniles and their families.

Four specific patrol divisions were selected, each with its own distinctive socio-economic characteristics. Within each area 100 juveniles were selected, each of whom had at least one contact with the police during the six-month period of July 1 to December 31, 1970. A longitudinal information file was then assembled on each of the juveniles identified, describing their contacts with the juvenile justice system both prior to and subsequent to the six-month period, in terms of police contacts, agency referrals, juvenile court appearances, probation and training school records, adult police contacts and

adult arrest records. In addition, 25 juveniles from each of the areas were selected for a more intensive follow-up study, involving family interviews and compilation of socio-economic background data.

One of the most significant—and equivocal—findings to emerge was the magnitude of police interventions for what might be termed "non-specific deviance". Approximately 43% of the juvenile events in which the police intervened involved behaviour for which the juvenile could not have been prosecuted for delinquency. Whether the magnitude of police interventions for non-specific deviancy represents a confirmation of police complaints that the community has abdicated its responsibility for controlling its children, or whether it represents a police-initiated appropriation of responsibility is of course impossible to determine from such a study. In either event, however, whether by delegation or appropriation, the police are intervening to a considerable extent to manage problems and conflicts associated with juveniles.

In those types of juvenile behaviour which did qualify for prosecution as delinquencies, discretionary or non-charging dispositions were observed in slightly more than one-half the police contacts with juveniles. In approximately 10% of these contacts the intervention extended only to a brief investigation of the juvenile as part of a routine check or a suspicion that the juvenile had committed an offence; the contact, in other words, did not disclose sufficient evidence to warrant either a caution or a charge. Approximately 45% of the contacts concluded with a caution, a disposition in which the juvenile was presumably identified as responsible for a specific delinquency, admonished and released. An almost negligible proportion of such contacts (less than 1%) resulted in a social agency referral, suggesting either that the police are denied direct access to such facilities or, alternatively, that the police doubt their utility for managing juvenile offenders.

Again, however, the significance of the data is somewhat equivocal. The proportion of contacts resulting in prosecution for delinquency would appear to be roughly equivalent to the proportion of cautions administered. Given the Youth Bureau's explicit commitment to discretionary dispositions and referrals, the frequency of charging options would appear to be rather high. One reason for the apparently high rate of prosecutions is that court referrals have proved the most effective means of linking juvenile offenders to service resources specifically suited to their needs. Because of the constellation of social service agencies grouped around the juvenile courts, the police may be employing charging options to secure access to these facilities. In any event, this is currently under study.

Other aspects of the Youth Bureau research programme are similarly continuing. Preliminary indications are that there is an absence of correlation between the frequency of discretionary juvenile dispositions and adult offences. Nor is there presently any indication that discretionary dispositions

lead to a diminution in juvenile deviant behaviour. In short, further analysis of the data will be required before it will be possible to assess the efficacy of discretionary dispositions directly with subsequent increases or decreases in deviancy.

Further analysis will also be required to determine whether variations in socio-economic characteristics from one community to another influence the frequency of discretionary dispositions. Although higher rates of cautioning were observed in certain of the divisions, a detailed examination of the types of offences for which cautions were being employed indicates the presence of substantially different offence patterns from one division to another. Whether these variations represent a genuine reflection of divisional variations in offence patterns or merely differences in police reporting procedures, it is not presently possible to determine; nor, as a consequence, is it possible to assign significance to the apparent differentials in discretionary dispositions.

5. *Criminal Occurrences and Relationships between Victim and Offender*

The assimilation and analysis of criminal occurrences within the 5411 patrol district also disclosed the presence of another type of claim on police social service capacity. In this connection, the term "social service capacity" bears a somewhat extended meaning. The definition includes, of course, those requests traditionally made to the police for assistance in the event of illness or accident, lost children and marooned pets. The more important element in the definition, however, is that presented by demands upon the police to act as a form of controlling medium. Such interventions tend to arise out of some form of interpersonal conflict, generally in the context of a relationship between parent and child, husband and wife, boyfriend and girlfriend, neighbours or other continuing associations, and are, when presented to the police, often eligible for application of a criminal charge.

The East York Community Law Reform Project data indicates that a significant proportion of the occurrences reported to the police involved victims and offenders whose relationships with each other preceded the criminal event and their contact with the criminal process. Whether arising out of a matrimonial dispute, an argument with neighbours or some such similar occurrence, the problem initially presented to the police is ambiguous and equivocal in its dimensions. Moreover, the problem is tendered to the police not so much because the complainant seeks to have criminal sanctions applied to the offender, but rather because the complainant has a vague expectation that the offending party or his conduct will somehow thereby be contained. In the absence of alternative support systems or appropriate agencies to which the matter could be referred, the police not unnaturally tend to locate the problem within the repertoire of options available to them. The consequence may then be that the problem is redefined by the police in terms of its criminal offence potential and the conflict will be submitted

to resolution by way of a criminal proceeding. An inappropriately formulated claim on the social service capacity of the police can thus propel the disputants into the criminal process in their search for a controlling medium.

Those who seek police assistance in renegotiating or terminating their relationships with others tend not to appreciate the limits of police authority in extra-law enforcement situations. The police-citizen contact in such situations accordingly involves interaction within a context of ambiguous definitions and expectations. On their part, the police are confronted with a dilemma between their express commitment to provide service and the absence of available support systems, skills and resources, either within the community or within the police organization itself. The consequence is often a high level of frustration for all concerned—the complainant because he sought vindication of his position over the history of the relationship, the offender because he feels it manifestly unjust that the criminal process should focus exclusively on an isolated, though legally relevant, event extracted from the continuum of the relationship, and the police because the parties are liable to unite in their mutual resentment of the process and its representatives. Accordingly, rather than viewing the criminal event as an isolated phenomenon involving only the offender and his specific criminal act, it is helpful to approach such events as the culmination or continuation of a process of social interaction between victim and offender. This perspective suggests an approach in which the contribution of the victim is assessed as a necessarily relevant factor to the understanding of the criminal event.

As one proceeds along the continuum of possible relationships from strangers to intimates, a distinction emerges between cases in which the event constitutes and defines the relationship, i.e., criminal events involving what are essentially strangers, and those in which the relationship generates the criminal event, an event grounded in but representing but one facet of that prior association. It is within this latter type of case that one finds the paradigm of intimates engaged in some form of strategic interaction which escalates to the point where one or the other of the parties to the conflict invokes the assistance of the police as part of a search for a controlling medium to assist in the renegotiation or termination of that relationship.

Between the extremes of strangers and intimates, there is an intermediate range on the continuum in which the criminal event, though not generated by the prior relationship, nevertheless can be said to arise out of the context of that association. Although these relationships lack the intensity which characterizes intimacy, they do demonstrate a sufficient measure of reciprocity and interdependence to suggest that the parties may be using the criminal process for interpersonal conflict resolution.

While it is not possible to attribute a specific motivation to those who sought assistance from the police in the East York sample, it is possible to suggest that a significant portion of the clientele of the criminal justice system is made up of victims and offenders engaged in mutual conflict; that they are ingested by the criminal justice system in the course of their attempts to renegotiate or terminate their relationships, and that this clientele can be located within the categories of offences against the person and offences against property.

Accordingly, with a view to determining what portion of the criminal justice system's capacity is directed to management of interpersonal conflict, the occurrences reported to the East York Project were divided into six categories:

(1) offences against the person;
(2) offences against property;
(3) offences against public order;
(4) victimless offences;
(5) criminal motor vehicle offences; and
(6) juvenile status offences.

This organization was imposed primarily with a view to isolating those offence types which by definition would involve offenders and specifically identifiable victims other than the state or its representatives (such as the police). By separating the categories which preclude the possibility of victim-offender interaction, either prior to or as part of the criminal event, and restricting the inquiry to offences against the person and offences against property, it becomes possible to interpret the data in terms of the relationship, if any, between victim and offender.

The examination of criminal occurrence patterns in the patrol district of 5411 suggests the presence of significant proportions of previously-associated victims and offenders. Among the occurrences reported to and cleared by the police over all categories of offence, pre-existing relationships between victim and offender were noted in 31.7% of the cases. When the focus was confined to offences against the person and property offences—thereby excluding victimless crimes, motor vehicle offences, juvenile status crimes and what were termed offences against public order—the proportion of pre-existing relationships among the occurrences cleared by police was 55.2%. It was also observed that although the frequency of such relationships was considerably higher among offences against the person than property offences (84.9% and 43.0% respectively), the relatively larger number of property offences meant that a significant portion of the police workload was made up of offences involving prior associations between victim and offender.

When the occurrence patterns were organized to permit an examination of the frequency of pre-existing relationships at the court-intake level, it was

noted that 23.3% of the occurrences which culminated in adult prosecutions over all offence categories involved previously-associated victims and offenders. Within the categories of offences against the person and property offences, 41.7% of the adult occurrences consigned to the courts by way of charge involved victims and offenders whose relationships with each other preceded the criminal event.

It is within this 41.7% that one could expect to find the phenomenon of strategic interaction between previously-associated victims and offenders culminating in the invocation of the judicial process. As the conflict escalates, one or the other of the parties to the dispute requests assistance from the police, with a view either to limiting or extending the dimensions of the conflict. The request for police intervention, in other words, is itself part of the process of strategic interaction. The complainant is more anxious to contain the offending party in his conduct than to ensure that he is appropriately punished. In the result, the search for an authoritative third-party intervention culminates in a demand upon the criminal justice system for assistance in the renegotiation or termination of the relationship between victim and offender.

An inverse ratio was observed between the intensity of the prior relationship and the use of charging options. This suggests the efficacy of short-term interventions by the police as an adjunct to interpersonal conflict resolution. The frequency of occurrences resulting in criminal charges declined as one moved along the continuum from "strangers" to "commercial" to "other friends and relatives" to "neighbours" to "family". Thus, none of the reported occurrences involving members of an immediate family proceeded to prosecution; all such occurrences were in fact vented out of the criminal justice system through some form of non-charging option. That the criminal conflict generated within family relationships could be defused at the police level without laying criminal charges suggests that the motivation for seeking police intervention was to secure the assistance of an authoritative third party for interpersonal conflict resolution and, moreover, that that end was achieved without the need for further penetration into the criminal justice system.

When the relationship categories were collapsed in order to determine whether the presence of a prior association between victim and offender affected police charging practices, it was observed that there was no gross correlation between the presence of such relationships and the police use of charging options. Further, it appeared that the decision to prosecute was more a function of the location of the responsibility for initiating the prosecution, whether with the police or the complainant, than the presence of a pre-existing relationship between victim and offender. It was also noted that when the prosecutorial initiative resided with private complainants (as in cases of common assault), they tended to proceed to prosecution less often than did the police when the decision to prosecute was primarily within

police control (as in property offences and offences against the person other than common assault).

The examination of criminal occurrence patterns in the 5411 patrol district also demonstrates that relatively few of the occurrences otherwise eligible for prosecution are in fact disposed by way of charge. Although the majority of occurrences reported were vented out of the criminal justice system at the police level, the decision to screen a case out of the system or consign it to the courts appears not to depend on the presence of a pre-existing relationship between victim and offender. Accordingly, it would appear worthwhile to examine police charging practices somewhat more closely to determine whether the factors which influence their decision to charge derive from characteristics inherent in the criminal event and its participants or from concerns peculiar to police organizational and operational needs. If, in other words, police charging practices should prove to be largely a function of their own institutional concerns, consignment to the judicial sector may not be the most appropriate disposition for those whose presence in the criminal justice system is largely a consequence of their efforts at renegotiating or terminating their relationships with each other.

6. *Discretionary Clearances: Observations on Police Screening Strategies*

When the East York Project was initially designed, it was anticipated that the structure would provide for a complete monitoring of all police activity within the patrol district of 5411. That is, the project was staffed at the outset on a 24-hour basis with a view to faciliating the reporting by individual police officers within the patrol district at the end of their respective 8-hour shifts. As a further control, arrangements were made at the divisional level to ensure that police activity which resulted in the production of occurrence reports from 5411 would be delivered to the project headquarters as a check on the self-reporting by the individual police officers within the patrol division.

By way of elaboration, it might be mentioned that during the first three and one-half months of project intake, from May 15 to August 31, 1972, a total of 362 occurrence reports were written up at project headquarters, representing a complete inventory of police interventions for that period of time. The project files thus provided an accurate record of police responses to claims on their resources, not only in their law enforcement and order maintenance capacities, but also in what might be termed their "social service capacity". Within this latter category would be recorded such matters as reports of missing persons, sudden deaths, mental health problems, etc.—matters which, strictly speaking, did not call for a law enforcement response. During that same period, only 228 general occurrence

reports were written up at the divisional level. There were thus 134 matters in which the police were involved where their intervention was not recorded, or, in any event, in which the description of the intervention did not reach the stage of being translated from the police officer's notebook into a divisional occurrence report. The category of interventions which tended not to be written up in general occurrence form was, as might be expected, that involving claims on the police in their social service capacity. These interventions were not given extensive analysis.

A further qualification on the range of police activity examined for the purposes of this study was that it was limited to matters involving offences against the *Criminal Code,* the *Narcotic Control Act,* the *Food and Drugs Act,* and the *Juvenile Delinquents Act.* Excluded from the scope of the study were police interventions involving such quasi-criminal provincial statutes as the *Highway Traffic Act* and the *Liquor Control Act.* The inquiry, in other words, was focused exclusively on police interventions of a criminal nature. In the end, there were some 789 such interventions over the one-year period in which the project was in operation.

Of the 789 occurrences reported to and recorded by the police in the patrol district of 5411 as criminal events during the project's intake period of May 15, 1972 to May 14, 1973, only 315 or 39.9% were cleared, and of that number only 100 or 12.7% were processed through the courts. The remainder were cleared by a variety of ways, all of them involving some measure of police discretion, whether by recording thefts as "cleared" upon recovery of the stolen property, by declining to record charges against offenders prosecuted in other divisions of the city, or by concurring in or encouraging a decision by the complainant to refrain from pressing formal charges against an offender.

It is important to emphasize, however, that these figures do not necessarily reflect a shortfall in police efficiency in the performance of their law enforcement and order maintenance functions. Rather, the inclusion of such a large proportion of discretionary clearances in the police performance index might well be viewed as an operational response to an extraneous standard (the clearance rate) which does not fit comfortably with the realities of the police function. In this sense, the "cleared otherwise" category represents a creative accommodation to an operational reality which merges the dual responsibilities of law enforcement and order maintenance into a concern for conflict management.

The significance of the magnitude of the discretionary clearances, however, lies in the fact that it produces an exaggerated clearance rate than in the fact that it emphasizes the relative insignificance of the other sectors of the criminal process—the courts and the correctional institutions—in the management of crime by the police. The occupational demands of the police function have produced a large-scale system of discretionary justice in which the

other sectors of the criminal apparatus are relegated to performing a back-up role, invoked only when the police find it inappropriate, impolitic or inconvenient to manage conflict through the exercise of discretion.

The corollary to this observation is of course that there is no direct relationship between reported criminal activity, apprehension of offenders and invocation of the judicial process. The responsibility for law enforcement and maintenance of order, in theory a responsibility shared by all sectors of the criminal process, has in reality devolved upon the police, whether by arrogation or delegation. As a consequence, the alternative of invoking the judicial process through the "cleared by charge" route becomes but one technique in the repertoire of options available to the police for processing their clientele. The articulated responsibility of the police, that of investigation and presentation of the evidentiary base for prosecution, has evolved into an unarticulated responsibility for disposition of its clientele of offenders. The fact that the "cleared by charge" category (12.7%) represents less than half the proportion of occurrences "cleared otherwise" (27.2%) would appear to indicate comparatively little reliance upon the judicial process in the selection of an appropriate disposition. In other words, the relatively high proportion of discretionary clearances to occurrences cleared by charge suggests that the police have acquired the major responsibility for designating what portion of their clientele will be admitted to the other sectors; more specifically, the intake and hence the function of the other sectors of the criminal process appear to be determinations largely within the control of the police.

A further corollary is that because clearance rates tend to be relied upon as the primary index of police performance, there is a considerable potential for modification of the rates to enhance the appearance of police efficiency. It is, moreover, plausible to suggest that the police are unlikely to be immune from the general tendency of all work organizations which are subject to assessment by clearance rates or similar evaluative criteria: the worker always tries to perform according to his most concrete and specific understanding of the control system. That is, apart altogether from the potential for manipulation of the performance indicators to cover a range of discretionary clearances, it is undoubtedly true that the performance criteria have a reciprocal effect on the nature of the performance itself. The features which characterize the occupational environment of the police—consistent pressure for rate production, a considerable scope for low-visibility initiatives, and an arbitrary but malleable performance index—are conductive to the development of a managerial perspective in which the nature of the function to assessment will be adjusted to enhance the institutional image of efficiency.

Although there would appear to be no immediate incentive to inhibit the reported levels of known criminal activity, there are nevertheless

pressures to modify the clearance rates within those levels. These pressures vary from division to division and derive to a considerable extent from characteristics peculiar to the communities which they service.

Indeed, there appeared to be so little pressure for enhancing clearance rates in downtown divisions that the police in those areas could afford the relative luxury of refraining from clearing, either by charge or otherwise, offences which in other divisions would automatically receive a "cleared" designation. If, for example, an offender were apprehended on a series of credit card frauds, it was likely that the only offence to be cleared would be that for which he was prosecuted. The others, although otherwise eligible for further processing, would neither be prosecuted, nor included in the offender's charge file, nor marked "cleared" for police purposes, even though the designation would obviously enhance the division's clearance rates. The indication was that the collateral offences, i.e., those for which the offender was known or believed to be responsible but for which he was not prosecuted, were included within the general occurrence reports as supplementary information, but were not submitted to the central records system. Only if the offender were considered a "rounder", i.e., a more or less permanent and professional object of police attention, or if there were a need for the expedience of "processing tolerance", i.e., a requirement that additional bargaining units be made available to encourage a negotiated plea of guilty, would these collateral offences be included within the charges submitted for prosecution.

In the suburban divisions, on the other hand, the nature of the criminal activity generated by the community makes for substantially different police practices. The preponderance of housebreakings, apartment locker thefts, stolen automobiles, the presence of economically marginal shopkeepers without the resources for prosecution of shoplifters, etc.—offences which pose obvious difficulties for a successful conclusion by investigation, apprehension and prosecution—creates considerable pressures for clearances. The police workload in such divisions tends to be more intensively oriented to satisfying clearance expectations through follow-up of citizen-reported events rather than through police-initiated activities in which there is a close correlation between event, apprehension and prosecution. The pressure for clearances accordingly appears to translate itself into manipulation of occurrences into clearance categories which are not, strictly speaking, appropriate. Thus, while the "cleared otherwise" category is expressly directed to occurrences which do not permit of a clearance by charge for reasons "outside the police control", it tends to be used, particularly in suburban divisions, almost exclusively to accommodate one form or another of police discretion. The result of such wide variations in reporting practices is of course to produce a decidedly unreliable picture of the level of criminal activity in a given division *and* of the level of police intervention in and control of that activity.

The perspective which emerges from this emphasis on rate production entails, to some extent at least, the subordination of the goals of law enforcement to the needs of the managerial function; that is, law enforcement, defined in terms of detection of crime, identification of offenders and consignment of those believed responsible to the judicial process, becomes an instrumentality for achieving those results by which the institution is to be scrutinized and judged. Prosecution, or routing the "cleared by charge" category of offenders through the courts, is accordingly useful primarily to the extent that it contributes to the support of the managerial role.

Of the features indicated as characterizing the occupational environment of the police, most are more or less immutable. The factor most amenable to variation, it is suggested, is that of the performance criteria by which the police are scrutinized and assessed. If the police productivity indices were to be altered to conform more closely with the realities of their function, such a conversion would have a corresponding effect on the police perception of their organizational goals and hence upon the manner in which their discretion is exercised. If they were to receive credit, both personally and institutionally, for restricting the nature and extent of official interventions, for conflict management and resolution at the discretionary level, such a redefinition of organizational incentives could have a profound effect on court intake patterns in terms of the kind of occurrences presented to it.

An analysis of the cases police chose to forward to the courts for prosecution further emphasizes the importance of police discretion in dealing with trouble through a variety of options. Of the 100 occurrences referred to the judicial sector for prosecution, 67 (or 67% of the occurrences cleared by charge) resulted in conviction at the adult level; an additional 14 (14%) resulted in some form of juvenile court disposition. In short, if one approaches the criminal process from the point of view of occurrences and their judicial consequences, rather than from a perspective involving individual offenders and their specific charges, it would appear that police charging decisions are ratified in the judicial sector to the extent of 81%. By contrast the "leakage" from the criminal process at the court level is relatively small: in 7% of the occurrences, the charges were withdrawn by the complainant or the prosecutor before trial; in 5% of the occurrences, the charges were dismissed during or after trial by the prosecutor or judge; in 1%, the prosecution resulted in a verdict of not guilty; and in 6% of the occurrences submitted for prosecution, the results were either pending (3%) or unknown (3%) when the project was concluded.

Persons designated as deviant for purposes of the criminal process tend to share a good many characteristics, for their identification is at least as dependent upon the operational perspectives of the agencies of social control as it is upon the deviants themselves. Although the police constitute only one of the agencies of social control, they are delegated a considerable portion

of this responsibility, for it is they who control the selection of offenders from the population at large and determine which among them will be tendered for prosecution.

The routing of occurrences clearly suggests the presence of social forces other than the criminal process in the management and resolution of conflict. Of the total number of occurrences reported to the police as criminal events, only 39.9% were accessible to some form of intervention by the criminal process. The residue of 60.1% was left for resolution (or non-resolution) within the community.

Of the 39.9% of occurrences which yielded to official intervention, some 27.2% were sorted out at the police level and disqualified from making further demands upon the criminal system. In the result only 12.7% of the occurrences were deemed eligible for further processing by remission to the judicial sector. On consignment to the courts, approximately 8.5% (or 81% of those whose eligibility was established by charge) fulfilled their administrative prophesy of guilt and resulted in the imposition of a judicial sanction. A further 1.6% (or 13% of those eligible) were rejected through withdrawals, dismissals or not guilty verdicts, with the remaining .8% unknown or still awaiting disposition. Of the 8.5% of occurrences which resulted in the application of criminal penalties, a mere 2.4% were appropriated by the correction systems, with the remaining 6.5% being transferred back to the community through sentences involving conditional or absolute discharges, suspended sentences, probation or monetary sanctions. In short, an extensive system of formal and informal vents operates to screen out all but 2.4% of those occurrences which have the potential for engaging the full range of institutional controls available for the management and resolution of conflict.

A decision to increase or improve the capabilities of the courts or correction systems would have relatively little impact on the quality of criminal justice. Although the gross intake might be increased, diminished, accelerated or retarded, the primary responsibility for determination of the qualitative features of the intake resides with the police. Not only do the police have the major responsibility for governing admission to the other sectors of the criminal process, but they have also acquired, as a consequence of the discretionary power which inheres in their function, a major portion of the responsibility for disposition of the criminal clientele. Accordingly, measures designed to influence the patterns of police discretion offer a relatively fruitful opportunity for effecting qualitative changes in the administration of criminal justice.

To that end, the presence of pre-existing relationships could be legitimated as a factor justifying the use of non-charging options or discretionary clearances by the police. Their institutional goals could be modified to place a premium on resolving such conflict through short-term crisis intervention or

referral to appropriate community networks or agencies, or by routing it to non-adjudicative dispute resolution forums. The relationship factor warrants legitimation as a criterion for diverting such occurrences from the criminal process because the structural characteristics of adjudication—the only legitimate conflict resolution forum within the criminal justice system—make it an inadequate mechanism for the resolution of conflict in the context of pre-existing relationships between victim and offender.

7. *Conflict and the Uses of Adjudication*

As the criminal justice system is presently structured there is only one procedure for settling disputes: adjudication. Any conflict capable of criminal definition which is not solved by negotiation or compromise by the parties must wind up in the courts. But our studies show that in a significantly large number of disputes the relationship between the parties is one for which adjudication does not provide the answer.

A criminal event arising out of a pre-existing relationship is just the last link in a varied chain of events. The parties relate to each other on many levels: they might be husband and wife, or businessman and client, or merely neighbours, but they interact socially on a continuing basis. When the relationship creates a conflict that leads to criminal action, this relationship is affected. What the parties want is a solution that will harmonize their difficulties, not necessarily a judgement that will crystallize their discord.

Yet, having invoked the criminal justice system, they must abide by its rules. And the process imposes on them a definition of the problem and a solution which do not correspond to their needs and wishes. Our criminal process, based on the adversarial techniques, focuses on conflict and forces each party to either win or lose a battle based on society's standards. In the process the individuals' characteristics, the nature of their relationship and the purely personal dimension of their dispute are lost. They have been subordinated to an external norm, the public interest.

The adjudication process can only work this way. It sets up an impartial arbiter of disputes, who must be given a set of guidelines. The guidelines cannot relate to the personal interests of disputants, therefore they must conform to an abstract notion of the common good. The result is our criminal law: rules regulating damage to property or persons in which one party is the victim and the other the offender. When parties submit to the criminal process, this framework must be imposed on their dispute in order for adjudication to work. And the framework will be imposed because we have no other mechanism for solving criminal-type disputes.

The dispute and the relationship thus change form. The invoker becomes "the victim", even though he might have contributed substantially to the event precipitating the crisis; the other party becomes "the offender", and is

immediately placed in a negative role where both the "victim" and the state join forces against him. The event itself may have been just one incident in the overall context of the relationship. Yet it is singled out and regarded as an isolated act. The machinery of criminal justice focuses on it, out of context, and provides solutions that might fit the isolated event but do not either take into account or accommodate the surrounding network of dependencies and interaction.

In a system which encourages—or creates—polarity, there is no chance of negotiating a mutually acceptable solution. Yet the parties are still locked into their bilateral relationship, and after the judgment they must continue to interact. The effect of the judgment can only create more tension and hostility, maybe even damaging the relationship to the point of breaking it. Thus no one wins, not even society.

An added anomaly is the fact that many disputes do eventually get settled in pre-trial negotiations between the lawyers. A plea of guilty usually means that the parties have agreed on a settlement and are asking the court merely to ratify it. It would be far better to provide some more formal mediation process at the pre-trial stage so that inappropriate cases can be diverted from the adversary system.

Our studies show that the adjudicative process simply cannot accommodate what are termed "polycentric" relationships—those which contain interacting elements on several different levels. The adjudicative process will force such problems into a mould which reduces them to a single dimension and will fit solutions to the newly-defined problems, without solving the actual conflict. Both the definition and the solution have been imposed by applying external and rigid norms and by disregarding the individual characteristics of the problem and its participants. This not only fails the individuals, and frustrates police, but in the long run it harms society and the public interest by sustaining a climate of hostility and discord which might lead to further criminal or antisocial acts. Any chance for compromise or settlement is eliminated by the system.

Adjudication plays an important role in the preservation of society's goals and standards, but it is predicated on the assumption that there are irreconcilable differences between the disputing parties.

What is needed is a system of conflict-solving mechanisms geared to continuing bilateral relationships. The terms of reference of such a system should extend beyond what is legally relevant in a criminal trial and permit the search for solutions on a wider basis—one which includes renegotiating and terminating relationships and taking account of social ramifications as well as mutual responsibility.

People with Problems:

Help-Seeking in East York

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PREFACE

The concept of networks has become increasingly popular as a useful way of organizing perceptions of social reality. Within the context of the community or neighbourhood, network analysis can be applied to interpersonal relations as well as to institutions, professions and occupations, and other social aggregates.

The findings of Bott and others have indicated that most individuals are embedded in interpersonal networks, consisting of strong ties with a relatively small number of close, important people such as family and friends, and of weaker links with a larger number of persons such as acquaintances or co-workers. (See Craven and Wellman, 1973). The smaller, tightly-linked networks of "intimates" are seen to act positively for their individual members in a number of ways, such as a source of personal identification, as a source of familiar and comfortable intimate social relationships, and as a source of support and assistance in times of everyday need and unforeseen crisis. (Wellman *et al.,* 1972).

The availability of support through membership in a closeknit network has an important effect on how individuals cope with the problems of change and instability. The material, psychological and other kinds of support that interpersonal networks may provide influence the ways in which people perceive and experience problematic life situations.

If network membership is linked in a positive way with the capacity to deal with stress, it would follow that individuals who are socially isolated or whose network ties are loose and ineffective will have different kinds of experience in solving problems and seeking help than would people whose social context includes the availability of salient resources. Problems may be both perceived and experienced as qualitatively worse phenomena than is the case for people who know that they may call upon others in time of need. The reciprocity implied in close, intimate relationships means that, although demands may be made on an individual to provide assistance, that person in turn will be able to rely on another. People who are isolated or whose networks are sparse or lacking in resources may find that the recurrence of trouble (which may be objectively worse for them than for others) will deplete their own resources, so that it becomes progressively more difficult to cope with stress.

An important function of interpersonal networks is the sharing of information, giving of advice, and offering of sympathy and criticism. Some of this information may pertain to the availability and usefulness of other sources of help beyond the network, such as professionals and institutions. Other people's experiences with the police or with the school guidance counsellor can encourage (or discourage) help-seeking from these sources. Individuals outside networks may not know about possible formal helpers, and they may also be unaware of different behaviours and strategies that could be used in dealing with bureaucrats or professionals in order to receive assistance. Thus socially isolated individuals may be more dependent on formal help sources because informal support is not available, but it may also be more difficult for them to gain access to the formal support system than is the case for people in networks.

For people both with and without network support, dealing with trouble is probably never easy. Relevant institutional support systems may be inaccessible for a variety of reasons. Problems may not fit the criteria of different helping agencies, so that no resources are available. The links between the informal and formal helping systems may be very attenuated, so that the potential help in one system is not available to the other.

The possibility of various coordinating mechanisms to bridge the gap between organized and unorganized community resources has been suggested by Litwak and Meyer, and others. Such a mechanism, by assembling unorganized resources and information by passing information to different groups within the community, and by interpreting the formal and informal systems to each other, could promote greater mutual accessibility and thus enhance problem-solving capacity. The advantages of such linking mechanism would be particularly apparent for socially isolated individuals, who may be more removed from formal helping systems than others.

This analysis focuses on the kinds of trouble experienced by East York residents, and what kinds of help they sought and received. The Neighbourhood Information Centre will be analyzed in terms of its function in the southeast part of East York as a linkage point, between the professionals and agencies serving the area and the local residents, as well as among residents themselves. While the effect of the availability of informal network support *per se* on the ways of coping with trouble will not be dealt with primarily in this analysis, the notion of network membership provides an organizing principle to the discussion of problems and help-seeking.

INTRODUCTION

This study of problems and help-seeking in East York is based on two sources of data: in-depth interviews with fifteen people who had been in touch with either the East York Community Law Reform Project or the Neighbourhood Information Centre (NIC), and the Yorklea random sample of 845 respondents drawn from the East York population. The Yorklea sample supplies information on a number of problems and life events and on the sources of help turned to in times of trouble, in addition to a variety of social and demographic factors.[1] While the study of this sample is valuable because it tells us about the occurrence of problems in the community generally, it does not give us much information about the process and implications of having trouble and getting help. In order to obtain a more complete picture of what it means to have trouble, a number of East Yorkers who had been in touch with one of two neighbourhood helpers, the Neighbourhood Information Centre (NIC) and the Community Law Reform Project, were interviewed in depth.

These interviews tell us not only about problems people have, but also about the process of getting help. The following section will deal with the use of formal and informal helpers by people in trouble. A detailed discussion of NIC, a locally-based, non-professional organization, will be the focal point for an examination of the linkages and the barriers between formal and informal networks in the community. The existence of a formal "neighbour" like NIC, acting as a kind of switchboard between organized and unorganized groups and resources in the community, may have some important implications for the help-seeking process, particularly for people who have little informal support available, or for people who have particular difficulty in dealing with institutions. These implications will be examined, with the aim of developing a broader sense of what it means to have trouble and look for help within the context of the community as a whole.

The problems that bring people into contact with the police and the system of criminal justice cannot be understood in isolation from the other kinds of trouble that occur in day-to-day living. The ways in which problems are defined and helping agents are perceived have implications for the role and function of police in the community. This study, therefore, looks at

problems and help-seeking which lie outside the realm of criminal justice as well as those within it. In this way a richer and more complete picture of the people in East York may emerge, with a better understanding of how different kinds of trouble are handled.

WHAT IS TROUBLE?

Trouble of one kind or another happens to just about everyone. For a few people, life is relatively trouble-free. If problems develop, they have the skills and resources necessary to deal effectively with the situation. For others, trouble is held off by various coping strategies. When something serious does occur, it likely depletes all available resources so that there is little if any protection against the next problem, which may happen at any time. Then there are people whose lives are steeped in trouble; for them, just getting from day to day poses a host of problems.

We all experience problems at various times in our lives; that is, we experience situations which may, for one reason or another, lead us to reach beyond ourselves in our search for a solution. Our problems vary from those which are straightforward and simply dealt with to those which are complex and with many ramifications, perhaps reaching the level of fullblown crisis. Factors beyond the immediate problem situation may influence the way in which we cope with making decisions and looking for a solution. Some of us thrive on problem-solving and can react efficiently and creatively in situations of considerable personal tension, while others of us may have difficulty handling events that are even slightly out of the ordinary. Obviously, problems can mean a number of things to people in different situations and contexts. Thus the same problem situation can elicit a variety of responses in terms of how the problem is defined, what kind of help is sought, and what kinds of expectations for resolution develop.

Some types of situations that generally require others' help are experienced by many people in the normal course of things and are considered to be known and familiar events. They may occur only once or twice, or perhaps several times during a lifetime, but they are nevertheless anticipated and possibly planned for. They may be associated with certain stages in the life cycle, so that we can predict when they will occur. The normative framework surrounding these events is fairly well defined, so that most people have an idea of what to expect and how to respond, according to these general rules.

The birth of a child is an example of this kind of general, familiar situation. Current technology enables people to enjoy parenthood by choice rather than by default. Births of children can now be carefully planned so that the actual occurrence of the event is no longer unpredictable. The social norms and expectations surrounding pregnancy and birth are quite well estab-

lished, although there are variations from one social or cultural context to another. But usually one is somewhat prepared for the event by general folklore and by the personal knowledge and experience of family, friends and neighbours. It is generally considered not only appropriate, but also necessary, to invoke the aid of a number of helpers: family members, close friends and neighbours, doctors, nurses, other medical specialists, and perhaps social workers or employers.

How Problems Develop

However, various circumstances can cause a familiar occurrence such as pregnancy and birth to change from an anticipated, planned, positive life event to a severe problem or crisis for which the usual social norms are no longer relevant. An unanticipated outcome of the event may demand a whole new set of responses, as when a problem develops in relation to the birth itself, such as a stillbirth or medical complications. The needed support and resources which are generally expected to be present may not be available, as may be the case for persons who are socially isolated, with no family or other informal supporters available to give advice, lend money, look after children, etc.

Similarly, the formal agents to whom one is supposed to turn for help and advice may not be available. For example, a mother receiving public assistance may be obliged to attend out-patient clinics, receiving only sporadic, occasional attention and being seen by a different doctor every time, while a wealthier patient with a private physician is given individual attention often and regularly. People who are labeled as deviants, or who become stigmatized within the context of a particular problem or situation, may find themselves deprived of the social and cultural supports normally available. In North America, only married women between about twenty and forty years of age are expected to give birth to children. Other women who complete their pregnancies and give birth may find themselves mildly censured and gossiped about, but without a significant loss of help (if perhaps a bit younger or older than is usual), or they may be virtually ostracized and punished rather than helped (such as an unmarried woman in a small community with a conservative value system).

Unrelated, unanticipated events may result in considerable difficulty. For example, sudden, unexpected job loss and subsequent decline in income can mean that a birth will exert severe economic pressure on a family that hasn't made special preparation. In this situation, a new set of responses and coping behaviour may have to be developed.

There are other types of events that may not be expected to occur, and if they should happen, the persons involved may find themselves unprepared and unable to cope. A middle class executive who never had reason

to question his job security may suddenly find that his company has gone bankrupt and that he is out of work. The role of breadwinner may be very important to such a man, and being deprived of this function may have serious implications for how he and his family face the situation. In addition, he will have to learn new kinds of behaviours, such as having to sell his desirability as an employee and waiting in line with other unemployed people to be interviewed by an employment counsellor.

In some instances, a problem can be seen as a unique event, occurring perhaps once or twice in a lifetime. In other cases, a problem may be a recurrent one, stemming from a person's life situation.

While the shift from secure breadwinner to novice job hunter may be quite traumatic for someone like an executive or professional, losing one's job may be a usual and predictable circumstance for someone whose work background is that of casual and unskilled labour. Being out of work in this situation, while still a problem, might be a familiar course of events with a previously established coping response to fall back on, perhaps without the same traumatic effect as for the unemployed executive. A person who is often without work is likely to have to contend with so many additional things that are associated with being unemployed that it becomes just one of a number of problems to be somehow handled.

Asking For Help

Once an individual becomes aware of having a problem, acknowledging its existence privately to oneself or openly to others has certain implications for how one perceives one's place in the world. It can imply failure to carry out a role or function that is of particular importance. Admitting such a failure to oneself can be very difficult, and admitting it to others even harder. When illness prevents one from being an active, involved parent, or when prolonged unemployment threatens one's role as family provider and breadwinner, stress is placed on all who are affected by the problem. When salient social roles can no longer be successfully performed, the process of stigmatization may take place, so that various labels implying failure are self-imposed by the person in trouble, or are applied by others. Anticipation of being so labeled may prevent a person from acknowledging problems to himself or herself, let alone to friends and relatives or to formal helping agents. Within a normative context which emphasizes independence and self-help, admitting that there is a problem that cannot be coped with alone may be so threatening that denial or secrecy are resorted to, and no one is appealed to for help. (Landy, 1965).

If one blames oneself for a problem, or if another person is seen to be at fault, certain coping strategies including decisions about help-seeking may be preferred over others. A problem for which no particular person

may be blamed (such as illness) may lead to different helpers, or perhaps no helpers, than in a case where blame is assigned to someone. People experiencing severe or recurrent problems may develop a cynical, fatalistic attitude, and may not seek help at all. This outlook is particularly true of members of deprived social groups, such as people with low and unstable incomes.

The decision to seek help involves a number of judgments and choices about possible helpers and the kinds of help that are both necessary and available. Helpers vary in terms of the benefits provided and the social, psychological and other costs exacted. The consequences of borrowing money from one's parents may be somewhat different from those which result from receiving a loan from a more distant friend or relative; they may be considerably different if one obtains a bank loan, and if one borrows from a syndicate loan-shark, the implications are different still.

Our research has indicated that most people are socially located within close-knit networks of relatives, friends, neighbours and co-workers. (Wellman *et al.,* 1972). Studies by Litwak and others have shown that primary groups continue to be an important source of sociability and support, despite pressures stemming from increased urbanization, geographic and occupational mobility. (Litwak, 1960a, 1960b; Litwak and Szelenyi, 1969). The continued predominance of kin as a source of help and support in day-to-day matters as well as in situations of serious trouble has been well documented. Studies have demonstrated the patterns of intergenerational help from parents to married children, with aid given in expectation of continued closeness and affection. (Sussman, 1953, 1954; Irving, 1972). In times of disasters such as floods and fires, close relatives were cited as the help source turned to first, followed by other informal helpers such as friends and neighbours, with formal community agencies, even those set up especially to deal with disasters, last on the list of choices. (Quarantelli, 1960). Most people have some degree of help available from their informal networks and they tend to see this source of support as the most desirable.

For certain types of problems, formal helpers such as professionals may be viewed as the most appropriate and skilled people to handle trouble. Thus one approaches a lawyer to deal with a law suit, a doctor to deal with sickness, an accountant to deal with tax intricacies. But both formal and informal helpers can exact costs which aren't always readily apparent. As a condition for receiving help, a person may be expected to modify her or his behaviour. A disapproving relative may demand some admission of personal failure before offering help. A professional may require a client to relinquish control over a situation before accepting a case.

How a problem is defined and what kinds of expectations are held about the outcome will influence how the help-seeking process is initiated and how it proceeds. If a direct service is sought which does not involve self-image to any significant degree, or if there is a shared frame of reference between helper and help-seeker, then assistance may be provided with a minimum of pressure to redefine the problem, of shunting the help-seeker from helper to helper, or of threat of personal denigration because of implied failure. Problems may be defined in a way that does not coincide with the helper's perception of what is appropriate in terms of the available services and assistance.

In such a case, the help-seeker may have to accept others' interpretations of his or her problem so that he or she can receive some measure of aid. If the person refuses, he or she may be denied service and be compelled to search for help elsewhere. Studies of the clientele of social agencies indicate that middle class clients, who have the requisite verbal skills and value system to successfully use psychotherapeutic services, are more likely to get continued service than lower class people. (Cloward and Epstein, 1965). The problems of low income groups are often of a concrete and immediate nature, and are perceived as such by the people who experience them. Appropriate help, from their standpoint, would be the direct provision of resources, such as money or medical services. When persons who see themselves as having this sort of problem approach a family counselling agency for help, they may be able to receive the kind of assistance they expected only after they begin to redefine their difficulties so as to be more compatible with the casework technique, and to undergo a process of introspection and self-examination that may not have been what they had in mind at all. Middle class clients, for whom a lack of basic resources is less likely to be a serious problem, tend to seek help from counselling agencies for marital problems, difficulties with children, and other problems of an interpersonal or psychological nature. Since casework is best suited for this type of problem, middle class clients and agency workers are more likely to be in agreement about problems and solution than is true for the lower class or working class client.

People who are negatively labeled because of a particular problem or because of their general life situation are likely to experience difficulty in finding receptive and responsive helpers. In order to receive needed assistance, people may have to undergo humiliation and derogation, such as questioning of one's real motives in asking for help, impugning of low moral standards or personal failure for being in trouble, etc. All these factors may act in some way to keep people from publicly acknowledging trouble or actively seeking help, or they may encourage people to drop out of the help-seeking process before some solution is reached.

Some Positive Aspects

Acknowledging the existence of trouble and asking for help in coping with it does not necessarily have the negative implications discussed above. Dealing with problems can be indicative of strength in coming to terms with a difficult situation. For example, divorce is often viewed within a problematic context, so that divorced people are seen as being more troubled than married people. Studies have suggested that divorced people are less healthy than married people. (See Renne, 1970, 1971). However, Renne found that when happily and unhappily married people were considered separately, divorced people had better physical and psychological health, higher morale, were less socially isolated, and had fewer emotional problems than people who had remained in unhappy marriages. She suggests that unhappy marriage, which is more strongly correlated with ill health, neuroses, social isolation, etc. than happy marriage or divorce, can be viewed as a disability, regardless of whether these factors existed prior to the marriage breakdown, or whether they were a consequence of it. In this sense, divorce is seen as a remedy to the problems of disability associated with marital dissatisfaction. (Renne, 1970, 1971).

Similarly, asking for help can have important positive effects. Our personal relationships are usually bound by the norm of mutual reciprocity, with social rules governing situations such as being asked to do a favour for someone who cannot reciprocate in kind, or giving assistance without expectation of being paid back. (Muir and Weinstein, 1962). Help-giving is a very meaningful and important act for many people. Those close to us may offer help in times of need, out of a formal sense of obligation, or because of the personal satisfaction they derive from it. For example, the helping pattern of middle class parents towards their adult children at times of marriage and birth of grandchildren is based on the satisfaction of helping their childrens' families to get established and perhaps achieve upward economic mobility. In return for gifts of money, appliances, vacations, and so on, parents expect their children to reciprocate with continued affection and attention, and inclusion to some degree in their children's lives. (Sussman, 1953, 1954). Asking for assistance may allow the helper to pay off a social debt owed to the person in difficulty, so that the expected reciprocity can be fulfilled.

Having trouble and asking for help can thus be seen as a process with numerous possibilities for its development and outcome. How we respond to trouble depends not only on the type of problem itself but also on our own ability to cope. This in turn is very much related to our social context, which involves factors such as the implications for us as social beings of having trouble, the availability of people to help us, and the costs and benefits of getting help.

PROBLEMS IN EAST YORK

Denial of Trouble

The first thing to note in a study of problems and help-seeking is that not everyone in fact experiences, or acknowledges, trouble. In the Yorklea sample, 18.7% (158) of the respondents had not experienced any of the eleven problems during their lives. Fifty-six percent (472) reported no problems within the past year. That is, they either had no problems or else they had problems other than the ones dealt with in the questionnaire. This is quite likely since some of the problems reported by the interviewed respondents, for example neighbour disputes, are not included in the Yorklea list. The eleven problems are heavily weighted towards areas of interpersonal and psychological functioning, without providing for problems which are rooted in a broader environmental context.

Men reported slightly fewer problems than women within the past year; sixty percent of men experienced no problems compared to fifty-three percent of women. Age also appears to be related to whether or not problems are experienced. Sixty-nine percent of the oldest age group, 70 and over, reported no problems within the past year, compared to only forty percent of those in the youngest group, 18-29.

Overall, our sample indicates that East York residents do not have more or fewer problems than one would expect for a community such as theirs. No demographic characteristics other than sex and age were consistently related to the likelihood of problems being experienced. The problems that were reported are not unusual in themselves, and they do not show unusual rates or patterns, especially when they can be compared to other studies (such as those dealing with medical problems).

It is quite likely that East Yorkers, older ones in particular, may feel uneasy about disclosing the incidence of trouble to strange interviewers. Thus there may have been a tendency towards a general under-reporting of problems by older respondents, contributing to the possibility that younger people, who may be more receptive to personal questions, were over-represented in the sample. Another difficulty in interpreting the data related to problems and life events is that respondents based their answers on a list of broad problem types, which could be understood in a number of ways. Thus what a husband might perceive as a child-related or sex-related problem, his wife might call a marriage problem. Also, differences in people's perceptions of how severe a situation has to be before calling it a problem are not accounted for. Thus not only may people have been hesitant to answer the questions about problems, they may also have been basing their replies on very different kinds of perceptions about what constitute problems.

TABLE 1

Frequency rates for problems during lifetime, problems during past year, and most disturbing problems during past year

N = 845	No prob.	Health	Work	Income	Parents	Children	Marriage	Loneli-ness	Sex	Getting along with people	Self dissatis-faction	Suffering a great loss
Life Problems*..	18.7	27.2	17.2	30.9	12.5	10.7	9.0	13.4	3.7	7.6	20.8	16.9
Year Problems†	55.7	14.6	7.3	10.3	5.4	4.7	3.0	5.1	1.5	1.9	6.4	3.9
Most disturbing Yr. Prob.....	55.7	12.6	4.3	5.8	3.8	3.8	2.1	2.4	1.2	1.3	3.3	3.7

*There are 21 missing cases. The percentage of people with none of the life problems based on N = 824 is 19.2%.
†Three missing cases.

Problems which are painful to remember, particularly if they could be interpreted as some kind of personal failure, may be denied to outsiders, if not to oneself. Mr. H. had been in touch with the Law Reform Project during the summer of 1972; according to the notes of the staff member who dealt with him, Mr. H. had a drinking problem, was having trouble holding down a job, and during a period of despondency he called the police and threatened suicide. Mr. H. denied the problem at first; when the Law Reform staff member first phoned, Mr. H. answered but he pretended to be someone else. When Mrs. H. was contacted, the problem was acknowledged, and Mr. H. soon went back to Alcoholics Anonymous for help. He continued to deal positively with his drinking throughout the summer, when contact with the Law Reform Project was ended. When this family was contacted again a year later to be interviewed, an appointment was made through Mrs. H. She had some difficulty recalling what the Law Reform Project was, but she remembered the name of the staff member who had been to see them, and she agreed to the interview without any objections.

However, when it came time to conduct the interview, it was immediately apparent that Mr. H. was totally opposed to discussing his previous problem. He denied the entire matter, claiming that he had phoned the telephone operator because he thought he was having a heart attack, and that the operator then phoned the police. He never understood why the Law Reform Project had come around, he said, since there hadn't been anything for them to be concerned about. He was very nervous, and responded suspiciously even to questions that weren't related to his problem. When asked to name six individuals (relatives, neighbours or friends) that he felt closest to, he responded, "The only name I'll tell you is my lawyer." During the attempt to interview Mr. H., his wife (who had been very cordial over the phone) appeared to be quite anxious and barely said a word. It was the interviewer's impression that Mr. H. had probably strenuously objected to the interview when his wife informed him of it and that the interview would have been cancelled if that had been possible.

Problems which are in some way embarrassing or painful may be denied or minimized in retrospect, and the possibility of personal responsibility may not be acknowledged. On the other hand, trouble that is more concrete in nature may be admitted to more easily.

The Yorklea data reveal that problems which are concrete and impersonal rather than being necessarily linked to one's behaviour or ability to function are the ones which occur most often. Health, work and income were the three most frequent problems reported during the past year and over a lifetime.

Serious illness is a disturbing problem even for people who can call upon all the resources they require. But for people who are in some way deprived

of these resources, ill health can be a devastating experience. Miss S., who suffers from a heart condition and who eventually underwent a hysterectomy, is a very thin, fragile woman who appears to become exhausted at the slightest physical or psychological exertion. In her forties, she has lived in Toronto for twenty-three or twenty-four years. She has no close family or friends, except for an ill sister and a nephew, who Miss S. says, "has his own problems". Her first contact with NIC (through a social worker from East York Social Services) was related to problems concerning her living arrangements; she had been renting a room which was cold and dark and without the kitchen privileges she had been promised. Through its efforts to obtain a more suitable room for Miss S. while waiting for an Ontario Housing apartment to become available, NIC learned of Miss S.'s health problems and kept in regular contact with her. Then when Miss S. started to undergo medical tests and became distressed at the treatment she received, she called NIC.

While Miss S. was in need of help concerning concrete difficulties such as paying for taxis to and from the hospital, she was also clearly terrified of what was happening to her. Her illness, because of her poverty and social isolation, became almost impossible for her to cope with, and the impersonal and inconsistent treatment she received while in the hospital confused and frightened her even more. She was told by a doctor that her heart was fine, despite the fact that she had been taking medication for angina for years; his diagnosis was based on a cardiogram taken on a machine that she believed to be faulty because she had heard a nurse and two doctors complaining about it. When she was discharged from the hospital, she had no sooner returned home than received a telephone call saying that she had to be re-admitted because she had cancer of the blood cells. This turned out to be an error, but it had a devastating effect on Miss S., according to the staff at NIC. During the next phase of her illness, NIC accompanied her to doctor's appointments, made arrangements to have her admitted to a different hospital where she would feel more comfortable, waited for her to come out of surgery and sat with her in the recovery room, and so on. In addition, the NIC staff was able to obtain some furniture for Miss S.'s apartment.

Sex and age are quite strongly associated with health problems, as has been the case in previous findings (such as studies related to differential use of medical services). (See Anderson, 1963). In the Yorklea data, health was the most frequently occurring problem for women. Thirty and seven-tenths per cent of women compared to 23% of men reported health problems within their lifetimes. Women were twice as likely to say that health was the most disturbing problem experienced within the past year: 16.2% (75) of women compared to 8.2% (31) of men. (See Table 3).

Health problems increase with age, so that, among life problems, 19.2% of the 18-29 age group reported health problems, compared to 18.6% of

people 30-39, 25.7% of those 40-49, 33.3% of people 50-59, 28.2% of those 60-69, and 48.2% of those 70 and over. Similarly, the severity increases with age along with the frequency, so that health increases as the most disturbing problem within the past year from 7.6% (14) for people 18-29 to 19.8% for people 70 and over.

Among the major changes or events occurring during the past year, events related to health were the most frequently reported. Twenty-three per cent (194) cited personal illness or injury as having happened to themselves or someone in their household, and 20% (169) reported a household member being in hospital. In addition, 12.1% (102) reported a change in the health of a household member. (See Table 2).

In addition to high frequencies being reported for health problems, work and income problems also seem to have occurred more often than other types of difficulties. Experiencing work and income problems is related to sex, with men reporting these problems more often than women. Thirty and nine-tenths per cent (261) of respondents cited income problems within their lifetimes, and 10.3% (87) experienced them during the past year. Of those who had income problems within the past year, half (56.3%) said that this was the most disturbing problem they had experienced within that time.

In our sample, men experience income and work problems more often than do women. Income problems are the most frequent ones for men over a lifetime, with 36.6% of men reporting such difficulties. Ten per cent fewer women (26.2%) have had income problems; these are second in frequency to health problems for women. Similarly, work problems over a lifetime occur twice as often for men as for women: 23.3% to 12%. Men were more likely than women to say that work and income problems were the most disturbing ones they had experienced during the past year.

TABLE 2

Frequency of major life events for respondents or household members

Birth	5.0% (42)	Death of close friend	14.0% (118)
Adoption	0.2% (2)	Began or ended school	7.6% (64)
New person in household	3.6% (30)	Major debt	12.7% (107)
Marriage	3.8% (32)	Change in leisure time	14.4% (122)
Divorce	0.4% (3)	Death of family friend	16.1% (136)
Separation	0.9% (8)	Change of religion	0.8% (7)
Arrest, court conviction	0.9% (8)	Change in health of household member	12.1% (102)
Child leaving home	4.5% (38)	Change in social activities	11.1% (94)
Retirement	2.5% (21)	Change in family get-togethers	7.3% (62)
Personal illness, injury	23.0% (194)	Change in relations with in-laws	2.1% (18)
Household member in hospital	20.0% (169)	Change in relations with household members	3.3% (28)
Work promotion	15.6% (132)		
Demotion, job loss	3.6% (30)		
Work change	12.2% (103)		

TABLE 3

Frequency rates of women and men for problems during the past year, for the most disturbing problems

N=845	No prob.	Health	Work	Income	Parents	Children	Marriage	Loneli-ness	Sex	Getting along with people	Self dissatis-faction	Suffering a great loss
Women—N=463												
Year Prob.....	52.5	18.4	5.6	8.9	5.4	5.8	4.3	6.7	0.9	1.1	6.7	3.5
Most dist. yr. prob.....		16.2	3.5	4.3	3.9	4.8	3.2	3.5	0.6	0.6	3.7	3.2
% of women with prob.*....		34.1	7.3	9.1	8.2	10.0	6.8	7.3	1.4	1.4	7.7	6.8
Men N=382												
Year Prob.....	59.6	9.9	9.4	12.0	5.5	3.4	1.3	3.1	2.4	2.9	6.0	4.5
Most dist. yr. prob.....		8.2	5.3	7.7	3.7	2.6	0.8	1.1	1.8	2.1	2.9	4.2
% of men with prob.*....		20.3	13.1	19.0	9.2	6.5	2.0	2.6	4.6	5.2	7.2	6.5

*Percentages based on people who experienced a disturbing problem: Women: N=220, Men: N=153 (3 missing cases).

While the specific problems that people reported may not have been, strictly speaking, related to income or work troubles, an indirect link can often be inferred. Thus Mrs. R., whose specific difficulty had been with a neighbour whom she claimed hit her daughter, is a single parent receiving Mother's Allowance and living in an OHC highrise. Her financial dependence and subsequent reliance on public housing means that she had little control over her immediate environment so that she cannot remove herself and her children from a situation that she finds intolerable. Mrs. G., also without financial security, had difficulty coping with an illness because she could not obtain the assistance and material resources available to someone with a higher income.

Family-related problems occur more often during a lifetime for women (13.2%) than for men (6%). Women and men report comparable rates of parental problems (13.6% and 11.3% respectively). Marriage and child-related problems are more often considered by women than by men to be the most disturbing problem within the past year.

There is another problem area where different rates of frequency are reported by men and women. Sex problems are the least frequently reported problem for both sexes, but men do cite slightly more sex problems than women (5% to 2.7%). However, these percentages are based on frequencies so low that one cannot attach too much significance to them. It may be that norms governing attitudes towards sex may result in an under-reporting of sex problems, especially by women. It may also mean that men and women perceive certain problems in different ways. For example, problems that men perceive as sex-related may be understood by women as associated with marriage in general, which may explain, at least in part, the higher rate of marriage problems for women.

Some problem areas considered over a lifetime are associated with age, even when controlling for sex. Work and parent problems are greatest for those 18-29 (for men, they are equally high for those 30-39). This is probably related to young people's concern with establishing their independence of their families, and with getting launched in the work world. Work and parent problems decline in frequency with increasing age.

A seventeen-year old boy who had been involved in a car theft, describes his situation at home:

> Well, my step-father, he's Italian, and I guess he has been brought up in a certain way. And he tried to be, well, I would say 'way too strict with me and he was restricting my freedom almost down to nothing. Not just my freedom, everything I did. And it ended so that we were constantly on each other's back and I couldn't stand it. And then it came out that I had to have a job for after school. And I tried to explain to my parents that there was no way that I could hold a job after school and study and keep any kind of marks up. And my marks had been going down anyway. And they gave me a sort of ultimatum, either get a job or it's out. So I started looking

TABLE 4

N = 845	No prob.	Health (123)	Work (62)	Income (87)	Parents (46)	Children (40)	Marriage (25)	Loneliness (43)	Sex (13)	Getting along with people (16)	Self dissatisfaction (54)	Suffering a great loss (33)
					Year Problems by Age, Grouped							
					(More than one problem could be experienced)							
18–29 (187).....	39.5	10.7	15.0	14.4	11.8	3.2	3.7	9.6	4.8	5.3	12.8	2.1
30–39 (134).....	53.7	11.2	7.5	17.2	10.4	6.0	7.5	2.2	0.7	0.7	9.7	3.0
40–49 (144).....	61.8	11.1	6.9	11.1	2.1	6.3	2.8	4.2	1.4	—	4.9	3.5
50–59 (161).....	55.9	19.9	6.2	6.2	3.1	7.5	0.6	2.5	0.6	1.2	2.5	5.6
60–69 (138).....	65.0	16.7	2.9	5.1	1.4	3.6	2.2	5.1	—	0.7	3.6	6.5
70+(81).....	69.1	21.0	—	4.9	—	—	—	6.2	—	2.5	1.2	2.5
					Most Disturbing Year Problems by Age, Grouped							
N = 376*												
18–29 (112).....		12.5	17.0	15.2	13.4	3.6	3.6	7.1	6.3	6.3	11.6	3.6
30–39 (62).....		19.4	9.7	17.7	16.1	6.5	11.3	3.2	—	—	11.3	4.8
40–49 (55).....		27.3	5.5	20.0	5.5	12.7	5.5	5.5	3.6	—	5.5	9.1
50–59 (71).....		39.4	7.4	8.5	5.6	17.0	1.4	2.8	1.4	2.8	1.4	12.7
60–69 (48).....		43.8	6.3	6.3	—	10.4	6.3	4.2	—	—	6.3	16.7
70+(25).....		64.0	—	4.0	—	—	—	12.0	—	8.0	4.0	8.0

*excludes respondents with no year problems.

for a job and of course I didn't find anything. So then I said, well, I'm going to leave, you're just going to kick me out anyway, so I might as well leave. Then they could say, well, he's leaving of his own accord, which was not true, really. So I moved away and then I was forced to get a job, not just a summer job, a permanent job. So I did that for the summer and then I came home . . . It's just a lot cheaper to live here. I'm getting along better with my step-father. We've straightened most of our difficulties out.

Other problems show a similar pattern, although the relationship with age is not as strong. For each sex, people in the 18-29 age group have the most frequent rates of loneliness problems, problems in getting along with people, sex problems, and in particular, problems of self dissatisfaction. Difficulties in making the passage into adulthood are likely reflected in the higher rates of interpersonal or emotionally-based problems for this age group. Income problems are greatest for men and women 30-39, marriage problems greatest for men and women 40-49, and child-related problems greatest for people 40-59. The association with age is for the most part linked to the different stages in the life cycle with which these problem areas are related. The same general kinds of associations with age and life cycle seem to hold for the major life events as well. The event involving the respondent or a household member that occurred most often was personal illness or injury (13.8%), followed by major changes in the amount of leisure time available (12.4%), death of a close friend (11.4%) and major changes in usual social activities (10.2%), with the second and last events probably related.

Another problem area which is similar to the more tangible difficulties related to health, work and income is that of disputes with neighbours. These disputes are seen by the people involved as being based in their general environment, like the problems previously discussed, rather than as being related to some difficulty in personal functioning. Four of the persons interviewed had been involved in disputes with neighbours. Only one of these disputes was resolved in a way that the complainants found to be satisfactory. Each person saw himself or herself as the victim of the neighbour's behaviour, and in varying degrees, wanted some kind of controlling action to be initiated, usually by the police.

The dispute which was resolved involved a boy of twelve, Sid Q., who lives on Main Street near the office of the Law Reform Project. He and a friend had built a tree house in the ravine nearby and had a neighbour's permission to cut across his backyard to get to it. One day when they were en route to their tree house, another neighbour (whose own property was not involved with the boys' comings and goings) became verbally abusive. According to Sid's mother:

Well, they went through these people's backyard to get to their fort down in the bush there. And the fellow across the road went over and threw stones up at them. And they couldn't get down. Like, they had to hide from the stones, and he was yelling at them. And when they came back they were still quite mad about it. And next door told them if they were

really put out about it to go to the place down the street, the Law Reform. So they went there and talked to them there. And then he [a Law Reform Project staff member] went over and talked to Mr. C. [the neighbour who threw the stones] and then he came over and talked to my husband, and Richard. I don't know, I think he came later to say what the result was.

INTERVIEWER: And everybody was satisfied with what had happened.

MRS. Q.: Yes, yes, everybody was happy, I think.

This incident was successfully resolved, inasmuch as the complainant felt that his position in the dispute was recognized by the person that he appealed to for help, and the incident has not been repeated since. This dispute could be dealt with through mediation, since neither party appeared to have a large stake in how it turned out, and since it was not regarded as being of real importance in terms of their immediate lives or their position in the neighbourhood. The incident turned out to be an isolated one, and it was not based on a particular ongoing situation that could have led to its repetition.

For Mr. and Mrs. L., their neighbour dispute was not important in itself (a ladder was stolen) but the circumstances which permitted it to happen were far more disturbing to them. This is a couple in their sixties, who emigrated from eastern Europe about twenty-five years ago, and have lived in their small bungalow in East York for the past twenty years. They had worked hard for many years in order to achieve a modest standard of living and to send their two daughters to university. Their quiet neighbourhood is changing now: directly across the street from their home are two large high-rises, with many low-income tenants whose rents are subsidized by the government, and a bit further northwest are two Ontario Housing highrises and several groupings of Ontario Housing townhouses. In discussing why their former neighbours who had lived there for many years had left, Mr. L. stated:

> Why they are gone, they are gone because the municipality this district mysteriously was declared as a highrise zone. Then the good working people and the good neighbours moved out and the speculators moved in. The speculators have no scruples. For ten years or fifteen years they have not made a touch on the house, but enormous rent. They are renting for people....
>
> MRS. L.: For profit!
>
> MR. L.: For people who I am sorry to say are riffraff people. One or two months they are living, paying out this enormous rent what the slumlord ask and then moving out. And they had not seemingly a profession, these people. They are here day and night and mostly night, and they are such neighbours, they have a car, for example, they start out from the house two o'clock in the night and coming back six o'clock in the morning. But I am not a policeman. It is not my business to look after, but I state only this.
>
> MRS. L.: Because we know this street and Main Street was a good residential working people's district. Never here was anxiety to go out after nine or after ten, the subway was not in at that time, but today you are anxious and scared to go after ten from the subway. It is ten minutes to go, you see. It is no good at all.

It was not the actual theft of their ladder by one of their transient neighbours next door that seriously disturbed this couple. They saw that the intervention of an outside helping agent was not effective in controlling the behaviour of their neighbour:

> Mr. L.: ... here two months ago moved out a family who was living here only about half a year, but when they moved in was on my wall for twenty years an aluminum ladder. The first thing that he has done is taken off the ladder, and the ladder disappeared. When I said to him, 'Pardon me, my ladder has been here twenty years and now you moved in and you take away.' 'I thought this was garbage so I take out to the dump where the garbage is dumped'. This was his answer. Then I went to your place (the Law Reform Project office) and I made my complaint. Then a very nice young Negro man with a beard has come out and spoken to me, what was my complaint? So I sent him over there but the man short with him. Two minutes he was back because he was rough and tough with him. But this man from your place told him anyway that it was mine and what he done was stealing. But we did not want the police to interfere and they shortly moved out.

As Mr. and Mrs. L. grow older and as they see their familiar neighbourhood undergoing rapid change, their sense of helplessness and lack of security increases. It is within this context that a relatively minor incident can assume great importance for the people involved.

Mrs. R., a single mother twenty-seven years of age, has three children and is supported by Mother's Allowance; the family lives in an OHC apartment building. An older woman who also lives in the building who is, according to Mrs. R., an alcoholic, hit one of the children with her purse while they were in the elevator. Mrs. R. phoned the police, and was referred by them to the Law Reform Project, but she was not satisfied by efforts to mediate the dispute.

> Mrs. R: She beat my five year old on the elevator. She's an old drunk, and I'm still waiting for her. She hasn't come outside. I'm still waiting for her and I am going to do my best to kill her. She's got no reason to beat a five year old child and the police won't do nothing. They told me to keep my hands off her, so I just politely told them where to go ... Yeah, and I called them (the Law Reform Project) and they said, uh, they went over and talked to her but she would only give me more hassle, and that didn't worry me none 'cause I was going to wring her neck if I do get my hands around it anyway. Maybe it's two years ago or going on two years ago, but there is no way I'm forgetting it.

It may be in some cases that disputes with neighbours have a positive function, in that they provide a focal point through which certain people can identify with their neighbourhood. Ongoing disagreements may also be a source of excitement and interest, as well as an opportunity to vent feelings of anger and helplessness that have their origin in other areas of an individual's life. In situations such as these, it may well be that the participants do not really want their disputes to be solved. However, in

the cases described here, the trouble experienced did not appear to serve a positive function for the people involved.

Helpers and Help-Seeking

When East York residents do admit to being in some kind of trouble, they do not readily approach others for help, particularly helpers who are representatives of agencies or institutions.

For certain of the problems experienced during the past year, about half the respondents reporting the problem stated that they had turned to no one for help: 45.7% of those with work problems, 53.2% of those with income problems, 35% of those with problems of loneliness, 50% of those with sex problems, and 36.4% of those with problems of getting along with people. Most of the people reporting the following life events within their households reported no help-seeking: change in amount of leisure time (94.3% experiencing the event did not seek help); death of a family friend (89%); change in social activities (91.5%); a new person moving into the household (86.7%); change in the number of family get-togethers (93.5%); change in relations with in-laws (77.8%); a child leaving home (86.8%); retirement (95.2%); work promotion (87.9%); demotion or job loss (87.9%); work change (85.4%); death of a close friend (87.3%); began or ended school (79.7%); major debt (75.7%).

We know from our data that the vast majority of people in our sample have some degree of informal help and support available to them on an everyday and emergency basis. When asked to name up to six "intimates", or individuals outside their household that respondents felt closest to, only 21 people out of 845 stated that they had no intimates. (Wellman *et al.*, 1972). Sixty and two tenths per cent of respondents stated that they had at least some everyday support available, and 81.3% reported the availability of emergency support. (Wellman *et al.*, 1972).

Except for medical problems, people who sought help at all were most likely to approach informal supporters, including spouse, relatives either inside or outside the household, neighbours, or friends. This is also true for major changes and life events experienced during the past year.

About half the respondents for whom work, income or sex was the most disturbing problem during the past year, went to no one for help. The other half turned to informal supporters to the virtual exclusion of professionals. Except for health problems, for which the doctor is approached as often as all informal helpers (47.2% and 46.2% respectively), informal supporters are far more likely to be seen as a source of help than formal agents.

For people who are socially isolated, with little or no informal help available, problems which might otherwise have been handled without too

much strain or anxiety can assume crisis proportions. Thus for Miss S., who had no one to turn to except for a nephew, illness was a crisis with which she could barely cope.

Lack of informal supporters may also act to keep people outside the network of formal helpers. Without family and friends to sympathize, offer advice and share their own and others' experiences, socially isolated individuals may be excluded from an important source of informal information about the availability and usefulness of various professionals and institutions in the community. Thus social isolation can exacerbate problems in three ways: the inability to share some of the burden of dealing with a problem means that an isolated person may be under greater strain, which may in turn interfere with a successful outcome; lack of informal support means that necessary resources for handling the problem may not be available; and social isolation may exclude people from a context in which it becomes possible to make use of institutional or professional assistance.

On the other hand, there are people with problems who have learned which formal helpers are appropriate and approachable. Good experiences in the past by oneself or by close relatives or friends may be important in encouraging a person to approach an unfamiliar agency or professional. Similarly, unsatisfactory outcomes of such contacts may mitigate against further use of these helpers.

Mrs. W., whose youngest daughter had taken a ring belonging to the family for whom she had been babysitting, is an example of someone who knows her way in and out of helping networks. She is a single parent, and lives with her three youngest children (who range in age from about 13 to 17) in an OHC townhouse. Mrs. W. is the treasurer for the recreation committee for the OHC highrises and townhouses in the area, and she seems to have a good idea of what is going on in her immediate neighbourhood. She is a very large, motherly woman, as well as voluble; when asked which people turned to her for help, she said, "Almost everybody." She in turn is very close to her two eldest daughters who are married, as well as to several friends and neighbours.

Mrs. W. has had good experiences with helping agencies as well. She and one of her daughters, who was present during the interview, spoke very highly of the Community Service Officers, and they both seemed to have a positive view of the police in general. Several of Mrs. W.'s daughters had had Big Sisters, and when the youngest daughter got into trouble, one of the suggestions of the Law Reform Project worker was a Big Sister be arranged for her as well. Mrs. W. had also learned that the way to get action is to appeal to someone in authority. When one of her daughters was being discharged from hospital and needed an apartment, but was put on a long waiting list for Ontario Housing, Mrs. W. decided to write to the provincial Minister

in charge of OHC, and very soon after her daughter was given an apartment. Since this strategy had worked so well, Mrs. W. used it again (successfully) to obtain housing for a friend of hers. The efficacy of this kind of action was reinforced when Mrs. W. was having difficulty with her son (her youngest child). She contacted the Law Reform Project worker who had helped her with her daughter.

> Mrs. W: . . . I had a bit of a problem with Johnnie. I can't think of it right now, but I told [the worker] and she suggested a Big Brother. I said, 'I have had his name in for a long time.' She said, 'I know the head of Big Brothers so I'll help you.' So she phoned this fella and he phoned me right back. About two weeks later he had a call to go down about a Big Brother.

A person like Mrs. W. can wield considerable influence within her own small sphere of the community. Her own experiences give her some authority and her advice is probably valued by her circle of intimates. Contact with such an individual could act to enhance one's chances of getting help, as well as one's perception of the immediate environment as a more secure and less threatening place.

The data indicate that, overall, East Yorkers who have informal support available to them (and most do) will seek help from within their informal network when they seek help at all. When formal help is used, it comes most often from doctors, and to a lesser degree from other medical sources.

East York has within its bounds a number of different types of social agencies, and the Borough is also served by agencies located outside its municipal boundaries. (cf. Etkin, 1967). The East York agencies have been viewed by their professional staffs as "under-used" by local residents. (Freeman, 1972). Within the community generally there appear to be tendencies both to deny the existence of trouble, and if help is sought at all, the helpers of choice are family or friends, or a trusted professional as personified by the family doctor.

The fact that agencies exist in the community by no means implies that potential clients are actually aware of their presence, nor does it mean that the usefulness or appropriateness of agency services is understood. People in trouble may know about an agency which is designed to help people in their predicament, but they may prefer to seek advice from among members of their personal network. In fact, there may be pressure to keep the problem "in the family".

Anticipation of pressure to accept a definition of the situation and a problem-solving technique that may not be in accord with one's own value system may keep people away from formal helpers. A person in trouble may find herself or himself having to cope with a social worker or bureaucrat who not only has a different perception of things (and the authority to impose

that definition) but who also may be keeping a "professional distance" and therefore appears indifferent rather than sympathetic. (Kadushin, 1962). A bad experience in the past may be generalized to all professionals or all agencies. People who are referred to agencies for counselling by institutions such as the school or the court are likely to become agency clients due to veiled or explicit coercion, a situation which is not conducive to a positive view of the formal helping system. This is particularly true for low-income groups who form the bulk of the clientele of public agencies. (Furman *et al.*, 1965).

The value system of the community may enhance or discourage agency use. Kammeyer and Bolton found that, of the two communities sharing the same family agency, the one with the higher rate of use had a value system compatible with the concept of family counselling. This community was centred around a newly opened university campus, with a growing population of people who were mobile, with high educational and occupational levels. There were more isolated nuclear families without extended kin ties in this community, and they had lived there for shorter periods of time. The high levels of education contributed to an attitude of "cosmopolitanism", which acted in conjunction with social isolation to encourage agency use. Kammeyer and Bolton found that the attitude of the community "gatekeepers" (Cummings' term) referring people into the formal system, in this case doctors and school officials, was so supportive of agency use that it had a positive effect on inhibiting characteristics such as low education or a "traditional" orientation.

The population of East York is older, largely Anglo-Saxon Protestant, lower-middle class and working class. These characteristics suggest the probability of a traditional, conservative value system, which would be skeptical of professionally-staffed agencies and which would emphasize the need to solve problems on one's own or with the help of close relatives or friends. The way that East Yorkers define their problems and their preferences among helpers indicates that the formal helping system does not play a significant role in the lives of most people in the community.

Doctors as Helpers

Of all the formal or professional agents that Yorklea respondents could choose from medical doctors were by far the ones most often selected. This is the case not only for health problems, but also for other problems where any help was sought from a professional. As one would expect, people who report health as the most disturbing problem during the past year turn to doctors most often for help. Unlike other problems, health problems elicit help-seeking from almost all who report them. Only 3.8% (4) of people reporting health problems turn to no one at all, and 29.3% (24) of people who had sought help from one source turned to no one else for help.

Forty-seven percent cited doctors as the people first turned to for help, and thirty-five percent turned to doctors as a second help source. Spouses were turned to next most often; twenty-eight percent cited their spouse as the first person turned to, and ten percent turned to their spouse as a second help source. Twenty-six percent of the people who said that health was the most disturbing problem during the year turned to doctors but to no one else. Second help source in this analysis refers to a single individual who was turned to in addition to a first helper; respondents who turned to more than one additional helper had to be excluded from the analysis due to data-handling difficulties.

Referrals among formal agents are negligible. There is one path (i.e. one instance) from doctor to clergy, one path from doctor to psychiatrist, one path from doctor to doctor, one path from doctor to nurse, and one path from social worker to doctor. All the data reveal is that two formal agents were approached; whether the first helper actually made a referral to the second helper is not clear.

Eight individuals who rated health problems as the most disturbing, sought help from more than one secondary source. Six of these cases included both formal and informal helpers, usually a friend and/or relative in addition to the spouse, and a doctor. One individual sought help from nine secondary sources, most of whom were formal agents: in addition to a friend and a neighbour, this person turned to the police, a clergyman, a psychiatrist, a doctor, a nurse, a social worker, and a teacher or principal. This is highly atypical of our population, however. The predominant pathway to help in the case of medical problems involves consultation with spouse and doctor, with the doctor usually approached for help first and the spouse second.

Respondents were asked about formal, or semi-formal, helping agents with which they or a member of their household might have been in contact during the past year for help with a disturbing personal problem. Half of the respondents stated that they or someone in their household had one or more contacts with a medical agent or agency within the past year. Nineteen percent had one or more contacts with the outpatient clinic of a general hospital, three percent had been to a psychiatrist or mental health clinic, and four percent had been in contact with a public health nurse. Among all formal agents, non-medical as well as medical, the family doctor was by far the most called upon helper. Almost half (46.9%) of the sample had been in touch with a doctor. In contrast with the other agencies, where most people said they had only one contact and only one household member was involved, people seeing a doctor are as likely to go a number of times as just once, and the frequency that two household members had been involved rather than primarily one person was somewhat higher (29.8%) than for other agencies.

TABLE 5

Most disturbing year problem by first help source

	Spouse (114)	Relation in HH (15)	Relative outside HH (34)	Neighbours (5)	Friend (43)	All informal helpers (211)	Police (1)	Clergy (3)	Psychiatrist (3)	M.D. (60)	Psychiatrist or counsellor (2)	Social worker (1)	No one (88)
Health (100)	28.3	4.7	8.5	1.9	2.8	46.2	—	—	1.9	47.2	—	0.9	3.8
Work (35)	22.9	2.9	2.9	—	20.0	48.7	—	—	—	5.7	—	—	45.7
Income (47)	27.7	4.3	8.5	—	6.4	46.9	—	—	—	—	—	—	53.2
Parents (32)	53.1	6.3	12.5	3.1	12.5	87.5	—	—	—	—	—	—	12.5
Children (32)	65.6	—	6.3	—	3.1	75.0	3.1	—	—	9.4	—	—	12.5
Marriage (18)	16.7	11.1	22.2	5.6	11.1	66.7	—	—	5.6	5.6	5.6	—	16.7
Loneliness (20)	15.0	—	5.0	—	35.0	55.0	—	—	—	10.0	—	—	35.0
Sex (10)	—	20.0	10.0	—	20.0	50.0	—	—	—	—	—	—	50.0
Getting along with people (11)	36.4	—	9.1	—	18.2	63.9	—	—	—	—	—	—	36.4
Self dissatisfaction (28)	32.1	3.6	3.6	—	32.1	71.4	—	—	—	3.6	—	—	25.0
Great loss (30)	20.0	—	20.0	3.3	10.0	53.3	—	10.0	—	3.3	3.3	—	30.0

TABLE 6

Most disturbing year problem by second help source

	Spouse (14)	Relation in HH (11)	Relative outside HH (28)	Neighbours (2)	Friend (31)	All informal helpers (86)	Police (0)	Clergy (3)	Psychiatrist (6)	M.D. (36)	Nurse (2)	Social worker (2)	Teacher (3)	No one (91)
Health (106)	9.8	4.9	7.3	1.2	7.3	23.6	—	1.2	2.4	35.4	1.2	—	—	29.3
Work (36)	6.7	6.7	—	—	33.3	19.4	—	—	6.7	6.7	—	—	—	40.0
Income (49)	5.0	—	25.0	—	5.0	14.3	—	—	—	—	—	—	—	65.0
Parents (32)	14.3	4.8	23.8	—	19.0	40.6	—	—	—	19.0	—	—	—	19.0
Children (32)	4.2	—	16.7	—	8.3	21.9	—	8.3	—	4.2	—	8.3	8.3	41.7
Marriage (18)	—	—	10.0	—	20.0	16.7	—	—	20.0	10.0	—	—	—	40.0
Loneliness (20)	—	10.0	20.0	—	—	15.0	—	—	10.0	10.0	10.0	—	—	50.0
Sex (10)	—	20.0	—	—	40.0	30.0	—	—	—	—	—	—	—	40.0
Getting along with others (11)	—	14.3	42.9	—	28.6	54.6	—	—	—	—	—	—	—	14.3
Self dissatisfaction (28)	—	10.5	5.3	—	10.5	17.9	—	—	—	—	—	—	—	73.7
Great loss (3)	—	—	6.3	6.3	31.3	42.9	—	—	—	—	—	—	6.3	50.0

The social prestige and status of the medical profession has been well established. Doctors' expertise in medical matters is generally accepted, and it is considered appropriate to consult doctors about questions of health and illness. The legitimacy of the medical profession's authority within the realm of its own particular knowledge and skills tends to be generalized to other, nonmedical areas. Thus the trusted family doctor (or internist, or gynecologist) may be asked for advice on matters such as marital problems, adoption, and so on. As can be seen from Tables 5 and 6, doctors are consulted about nonmedical problems more often than any other formal agent.

While doctors may be confronted with nonmedical problems by a number of their patients, they may not refer these patients to other community agencies. This may be due to a lack of information about existing community resources, or due to skepticism about the usefulness of these agencies. (Cumming, 1968). It may also be that physicians feel that they have the ability to handle certain problems themselves, without referring patients to other medical specialists such as psychiatrists or to nonmedical sources of help such as family counselling agencies. (Friedson, 1968).

People may prefer to go to their doctor with nonmedical problems since they may view the physician as a figure of trust and authority as well as knowledge. It may also be that they feel more comfortable in control in a relationship based on fee-for-service. (Cumming, 1968). Patients in fact exert some control over doctors inasmuch as they can switch to another one if they are in some way dissatisfied. (Friedson, 1968). The fear of losing clients may deter doctors from referring people to nonmedical agents, or

TABLE 7

Frequency of contact by respondent or household member with agencies during the past year

Outpatient clinic of General Hospital	18.6% (157)
Public Health Nurse	3.6% (30)
Family Doctor	46.9% (396)
Psychiatrist or Mental Health Clinic	3.4% (29)
Family Service Agency	2.4% (20)
Social Worker	3.1% (19)
Clergy	6.2% (52)
Police	6.3% (52)
Family Court	0.8% (7)
Welfare Department	0.6% (5)
Radio or Newspaper	1.2% (10)
Public Official	2.6% (22)

Total Agency Contacts—800 (respondents could have had several contacts with one or more agencies)
No Agency Contact—369 (43.7% of 845)

even to certain types of medical specialists, such as psychiatrists. (Cumming, 1968). This fear may also influence doctors to accept patients' perceptions of their own difficulties without attempting to redefine them, or to offer solutions which will be more readily acceptable.

Thus people may prefer doctors as helping agents because, in addition to feeling that they are being helped by someone with professional prestige and authority, they also exert some control over the relationship. Therefore, they may be under less pressure to redefine their problems or to undertake a course of action not of their choosing than might be the case if they were dealing with agencies with which reciprocal control is less likely.

The low rates of contact with agents specializing in counselling such as clergymen, family counselling agencies, social workers and psychiatrists, may be in part explained by the preference given to doctors, since it may be less threatening for people to reveal personal difficulties to someone who already has been consulted on intimate and personal physical matters. East Yorkers, as represented by the Yorklea sample, are almost never in contact with the family court or the welfare department. (See Table 7.)

The Police as Helpers

East Yorkers in general, as represented by the Yorklea sample, are very seldom in touch with the police. The police contact that does exist could include not only help-seeking but also contacts where the respondents are themselves targets of some police decision or action. So the 6.3% of the sample who were in touch with the police may not have necessarily initiated the contact themselves. Only one person contacted the police about a most disturbing problem during the past year, in this case a child-related problem.

Among the people who were interviewed, the frequency with which there had been police contact was much greater, since these individuals were selected because they all had had some kind of difficulty (as opposed to the population at large). Peter R. was the only person whose involvement with the police was as an offender rather than as a complainant. Mrs. P. had called the police when her son had been lost, some years previous. Mrs. H. called the police when her daughter stayed out very late one night; when her daughter was caught shoplifting, the Youth Bureau became involved. Mrs. V. also was in touch with the Youth Bureau when she thought her daughter had been raped, and on the several occasions when the daughter disappeared for four or five days. Mrs. W. called the police when she discovered that her daughter had stolen a ring and that the neighbour was threatening to press charges. Mrs. N. contacted the police over her problems with her neighbour, as did Mrs. R. Mrs. C. called the police when here husband became abusive.

The duality of police roles has been commented on by numerous observers. (See Banton, 1964; Cummins, 1970; Reiss, 1968; Wolfgang, 1968.) One part of the function of police is that of overt control, whereby people are "policed". Another part is support of people in need of help. As Reiss points out, police authority is accepted by the latter group, but it is rejected by the former. When people call the police for help, they do so on the basis of an implicit assumption that the police have the authority to act on their behalf, including the controlling of other people's behaviour, if necessary. The expectation that the police will act on complaints may persist even if the complainant is unwilling to press charges. (Wilson, 1970). Domestic disputes are a good example of this kind of situation.

The police are often expected to deal with complaints that are ambiguous or beyond their jurisdiction. They may handle the problem by referring the complainant to a more appropriate agency, or the police may contact the agency themselves to ensure that action is taken. This, however, may not satisfy a complainant who sees himself or herself as a victim and wants evidence of some immediate, concrete results.

Mr. and Mrs. N. phoned the police several times with regard to an elderly woman next door. There had been some vandalism in the area and the N's contacted the police again after one of their windows had been shot out with an air rifle.

> MRS. N.: ... Anyway, we phoned the police then and he come up and he says, 'Oh, are you still here, haven't you tried to move yet.' I said, 'Wouldn't you like to buy my house, then?'
>
> MR. N.: He was very snotty with me. He said, 'What the hell are you doing that the neighbours around here are all picking on you?'

Previously, the police had advised the N.'s to go to a Legal Aid Clinic to find out what their rights were, because the police were not able to intervene directly in the situation with the woman next door. The N.'s accepted the fact that the police could not take any action, but they were very upset at the rather blasé suggestion that they move and that their troubles in the neighbourhood were of their own doing.

Mrs. R. called the police about the woman in her apartment building who had struck her daughter. The police advised her to stay away from the woman, but Mrs. R. apparently wanted a more punitive action undertaken. Consequently, she was dissatisfied with the police attempt to cool out the situation.

> MRS. R: . . . I had gone to the police but the police said they couldn't do anything and they told me to keep my hands off her, so I told them politely where to go, and that if I caught her outside I was going to kill her.
>
> INTERVIEWER: So then you called the police?
>
> MRS. R: And they didn't do nothing.

INTERVIEWER: So you talked about this difficulty with a psychiatrist, a doctor, the police, a Children's Aid Worker, Law Reform and your neighbours. So they all knew about it. Who did you get the most help from?

MRS. R: Nobody.

INTERVIEWER: Who did you feel was the most likely to help you?

MRS. R: I thought the police was.

INTERVIEWER: Have you been in touch with them since that time?

MRS. R: They've been in touch with me.

INTERVIEWER: What were you hoping that the Law Reform would be able to do?

MRS. R: I just called to see what they would do.

INTERVIEWER: You didn't have any expectations of what they might do?

MRS. R: Ha! Not after what the police did!

INTERVIEWER: If you had a similar problem, say, with another person who lived in the building who distressed you in some way, who would you go to now for help?

MRS. R: I would go to nobody to help me.

Wilson has observed that police have learned to be suspicious of explanations given by victims as well as by suspects or offenders, and that even in areas where the public has a positive perception of the police, contacts between individuals and the police in other than commonplace matters are generally not satisfactory for either party. (Wilson, 1970). Thus the N's resent what they consider to be scepticism and indifference on the part of the police, while the police, in spite of some commitment to providing supportive service, must investigate cautiously and in any event may not be able to take definitive action.

The dilemma produced by a commitment to provide service coupled with a lack of requisite resources in the community to back up service can be frustrating for patrolmen who face daily requests for help that they may not be able to handle. Cummins points out that for front line officers, police work probably means law enforcement rather than service work, so that service work (by patrolmen) may have low status. This could explain what appears to be a casual attitude on the part of policemen investigating problems; professional distance between policemen and individuals in order to prevent too great a personal involvement may also account for this attitude.

East York has two Community Service Officers attached to its police division. As the title implies, these policemen are particularly concerned with providing supportive services and with community-police relations. Their commitment to service is obviously quite strong. These officers were interviewed about their role as problem-solvers in the community, and when asked whether they thought people called the police appropriately one of them said:

OFFICER B: Who am I to say whether it is appropriate or not? All I know is that the people in this city have been accustomed to getting a service, a type of service. And they were getting this type of service long before Officer A and myself came along and we are continuing to give that service. Now I don't think it's for me to say whether it is right service or not. It's part of the job. Things like, the police will get a call from a little old lady whose basement is flooded, so one could look at it and say, 'Well, this is not a police matter because the police are not plumbers. They are law enforcement people.' For as long as I can remember we have got those calls . . . But we have been accustomed to giving that kind of service so we go to every call. My training was that I tagged along with a senior P.C. That was my practical training. When I went with him, we went to a call where someone's cat was up the tree. So I went along and I assumed immediately that this was part of the service we offered.

The C.S.O's seem to see the police department as being a kind of social agency by default. They accept this as part of their function, as the above quotation illustrates, and generally try to handle problems by referral as much as possible.

OFFICER A: Well, I think over the past ten years the word has gotten around that we are a social agency . . . We aren't turning anything down. We're not a pick and choose agency, anyway. If Mrs. Smith phones and says her plumbing is on the fritz or her cat is up a tree or little Johnny phones in about his bike being stolen, well, we're not going to say 'Go away'. I mean, we respond to all these calls. Just like a bank robbery. Mind you, we assess our priorities and go to the bank hold-up first. Because of this, the word's got around: phone the police, they don't turn you down. Another thing is that we are one of the few social agencies—if you want to accept that we are a social agency—that we are open twenty-four hours a day as opposed to the usual nine to five, Monday to Friday, so we are available. And when somebody wants a psychiatrist at three o'clock in the morning and they call the hospital and they can't get a psychiatrist, who else are they going to turn to but that yellow car floating around? They know we are always out there for something.

INTERVIEWER: When they call because you are available with a problem you can't really solve, what happens then?

OFFICER A: Like I said, we aren't miracle workers. And a lot of times we can't solve the problem. All we can do is assess it and hopefully make a referral to the appropriate agency. Because, although we aren't miracle workers, if we don't know how to solve the problem, at least we do know where to refer you. We have a host of agencies at our finger tips.

The unavailability of professionals and agencies between five in the afternoon and nine the next morning is a particular source of frustration to these officers. Problems with people who are suffering from mental disorders were the ones mentioned most frequently by the C.S.O.'s, but they also noted the difficulty in reaching a psychiatrist or a social worker to deal with people in crisis.

While the C.S.O.'s define part of their role as providing service despite the lack of constantly available professional help, stepping into the gap can have negative consequences. The officers have on occasion been accused of making judgments that should have been left for psychiatrists or others.

> OFFICER B: ... I get very incensed when people say to me, 'Who do you think you are, cop? You're playing shrink.' Well, there would be no need for me to play shrink if there were a shrink available. That's the way I see it. And I'm saying if we had those agencies at our disposal when we needed them, it would make our job a lot easier. And perhaps the quality of service that the community gets would be a lot better than it is. Maybe I'm assuming a lot, but I'm taking for granted that a person who is a trained social worker is skilled and qualified in her art, or his. And I'm saying if, instead of me doing the counselling, a trained person would do it, the results would be a lot better. That's the way I see it.

The availability of other supportive resources undoubtedly enhances the policeman's problem-solving function. After Mrs. C. had decided to lay assault charges against her husband, she was fearful that he would become violent when he discovered what she had done. When the police arrived with the warrant, they had already been advised of the potential danger by NIC, who had been in regular contact with Mrs. C. The policeman waited outside the C.'s house in case of trouble, which soon erupted when Mr. C. threw a chair through the living room window. The policeman got Mrs. C. (almost nine months pregnant) and her two children safely to the next door neighbour's, and then went off looking for Mr. C. who had run out in the confusion. Mrs. C. phoned NIC, which phoned Mrs. C's worker at Catholic Children's Aid to inform her of the situation, and then contacted the Emergency Hostel. NIC arranged for a police cruiser to pick up Mrs. C. and the children and bring them to NIC until they could be brought to the Hostel. The staff at NIC took turns sitting with Mrs. C., who was very distraught, and gave her and the children lunch; several hours, later, the police took them to the Hostel.

It seems quite likely that if NIC had not been available, the police would have been left with the task of "babysitting" the C.'s, a task which they apparently resent, and which would have kept them from carrying out other responsibilties.

Although the police, especially the C.S.O.'s, emphasize the provision of "service" rather than focusing solely on "law enforcement", this view is not necessarily shared by the people who are in touch with the police. As indicated in the cases of Mrs. R. and Mr. and Mrs. N., police responses to requests for help do not always correspond to the expectations. In addition, there seems to be an attitude that, despite a positive view of the police in general, they cannot in fact provide protection against real danger.

The duality of police roles has been commented on by numerous ob continued in the neighbourhood, even though the Project had not been able to really solve their problem (either by restoring their stolen ladder or by subduing their neighbours). They felt that the Law Reform Project was easier and less threatening to use than the police. Mr. L. gave an example of a friend who owned a coin laundry, which he discovered was being used as a distribution centre for drugs. This man was very upset but was afraid to phone the police, lest his business be damaged by a police investigation, or even padlocked.

> Mr. L.: I give you the example of the coin laundry. They will not go to the police. They do not want to wreck the establishment and then have bankruptcy. But when you [the Law Reform Project] are in the Main Street like before, then he will go over and tell you and trust you and you can act behind him. ...And then we can fight today's crimes discreetly.

Mr. L. gave another example of what he seemed to consider to be arbitrary police behaviour:

> I will tell you a very good example about police and the neighbourhood. Here was three or four fires in this house (across the street) when it was built . . . So the firemen comes out three or four times, and the fourth time that he comes here, here was a hydrant before my house. The fire chief comes to me and says, 'Look, I can ask a favour from you?' 'Yes, you can.' 'Look, someone parks his car before a hydrant, you call the police. If you call the police he must go away because we need this hydrant when there is a fire.' And there was always trouble because here is always some truck or some car. Four times I phoned to the police. The police has not once come out and acted. But my son-in-law. . . twice with his private Volvo, both times he got a ticket.
>
> Mrs. L.: And you can know from that.
>
> Mr. L.: I'm finished. That is a good example.

The L's spoke highly of the police in a general sense, but despite this positive view of the police, the L.'s still expressed fear that the police would not be able to protect them from danger, even if the police recognized their complaint as legitimate. They also seemed to feel that the police are often skeptical of appeals for help.

> Mr. L.: But an average citizen is afraid to go to the police. I told why [the example of the coin laundry]. But the average citizen is better off in his complaint to go to a law office like yours and you go with him to the police.
>
> Mrs. L.: They're supposed to be leaving those projects. They supposed not to make finish these projects. [The Law Reform Project]
>
> Mr. L.: It is very direct when I call police. Even when I have a burglary and I call the police, and the meantime the burglar run away. I have a foolish feeling when the police call and say, 'What was the trouble?' and I say, 'Here was a burglar'. He believe what he wants—maybe it was a skunk or a racoon, you know. It is no good. The trouble is the criminal, or the would-be criminal, has more rights than we in our country . . . Why I don't want to pick up the phone and call the

> police? Because these people [his neighbours] are such people when we call the police, and the police step in, then the revenge, and whether my property will be damaged, or I will be damaged somehow, you know. Therefore, your project was a very useful project in this district.

Overall, it seems that the police in general, and the C.S.O.'s in particular, have a commitment to provide supportive service as a legitimate part of their police function. The C.S.O.'s described the police department as a type of social agency; however, the distinction between the service function of the police and that of other agencies did not seem at all clear. The C.S.O.'s complain of a lack of constantly available professional resources, and indicate that they would readily relinquish "playing shrink" if only the appropriate agencies would move in to fill the gap. However, the more accustomed the police become to providing social support, the less easy it may become over time for them to move out of this role, if other community institutions begin to increase their availability.

The police continue to be a visible and available source of potential help for problems outside the area of law enforcement *per se*. It is within this residual category that the police function is not clearly defined, so that the police are left to exercise a considerable amount of discretion. The people who call the police also have an unclear idea of how far police authority extends in extra-law enforcement situations, so that they may have unrealistic expectations of what the police can actually do. Thus the police-citizen contact concerning the problems being discussed here involves interaction within a context of ambiguous definitions and expectations. The result is liable to create at least some frustration for both parties.

The police seem to be well regarded generally, but, as the Yorklea data seem to indicate, people who ask for help from formal agencies do not tend to approach the police to any large degree. The view of the police as the providers of social support seems to be more applicable to people who cannot turn to other sources for help.

Definition and Solution of Problems

A problem may occur as a unique, discrete incident, with a clearly recognized beginning and end, and with an unambiguous cause and solution. Generally, however, it seems that while problems are recognized as having occurred (or as being in the process of occurring), ideas about what constitutes a solution are not always clearly understood.

Mr. and Mrs. N. felt that their difficulty started when their neighbour moved back into the house next door (which she had been renting to someone else) and allowed it to fall into disrepair. The solution would be to legally compel the neighbour to repair her house, or for the Borough,

the department of public health or some other body to take responsibility for making repairs. Their problem, as they saw it, was their inability to elicit a statement by any authoritative person claiming responsibility for ensuring that repairs were made.

In contrast to this, Mrs. H.'s perception of her problem with her daughter was somewhat more ambiguous. Laura, her fourteen-year old daughter, had been behaving for the past several years in a way that her mother found increasingly disturbing. According to Mrs. H., Laura was talking back to her, smoking and drinking behind her back, skipping school, hanging around with a group that she didn't approve of, and apparently being sexually promiscuous. Mrs. H., who struck the interviewer as a very angry and depressed woman who felt trapped and hopeless in her environment, seemed to feel (although she didn't state this directly) that Laura's behaviour was the root of the problem and that the solution was to find some person with authority who could control Laura. Laura was in and out of foster homes, as Mrs. H. refused to have her at home. She did come home for a period of time, during which she was caught shoplifting, as a result of which she was placed in a group home for girls. In her search for a controlling medium, Mrs. H. was in contact with a number of helping agents; the police, a 'Y' worker who was located in the community office of the OHC development, a counselling clinic, a psychiatrist and the social worker attached to the psychiatrist, a high school guidance counsellor, a Children's Aid worker, two sets of foster parents, the Youth Bureau, a worker from the Law Reform Project, a family court judge, and the psychiatric clinic attached to the family court. The only helpers that she expressed satisfaction with were the Law Reform worker, who recommended to the judge that Laura be given psychiatric assessment by the court clinic, and the clinic itself.

Mrs. H. didn't express a clear idea of what kind of intervention she wanted. When describing her difficulties, she made several vague references to needing "help", without saying what kind of help she meant:

> Mrs. H.: Laura was too far gone for counselling. I told Mr. F. [the Children's Aid worker] from the start, 'Listen,' I told K., [the Y. worker] too, I said, 'Laura needs more than counselling, she needs help,' because she was a highstrung kid to begin with.
>
> She came home [from the second foster home] and Mr. F. said he'd put her on probation until Christmas. Well, she done fine until around maybe February. She was lippy, but all I did was threaten her, you know, I said, 'I'll put you right back in again, Laura, if you start hanging around with this crowd again'. But it was like she was crying out for help, but we couldn't get it. We weren't getting anywhere.
>
> The "Y" worker set up an appointment to see Dr. C., a psychiatrist, so we went there. She talked to Laura. She gave her four pills. That would settle Laura down. That was the last she ever got. We went out, we went home, and we got into a fight. So we went again the following week and Dr. C. said herself, "If you don't feel like I'm helping,

find the help you think you need.' I said, 'I didn't feel there had been any help here.' I told her straight out. I said, 'I'm not taking Laura back there, either.'

. . . So then when we got home [from court], I was really scared. I figured this is it, it's game over, you know. And I figured, she needs more than training school. Training school wasn't the answer, she needed help.

Eventually, Mrs. H. intimated that what she had been looking for all along was a way to free herself from Laura's challenging behaviour which she could no longer control:

MRS. H.: So we went to the court psychiatrist and they asked me if they could work from the home and I said, 'No, there was no way', because I knew it wasn't going to work here. Laura and I just didn't see eye to eye, so I said, 'The only way Laura is going to be helped is that she has to be out of the home'. I said, 'There is no sense helping her here when she is back out with the same crowd again.' I said, 'It won't work'. So they suggested she be taken out of the home.

She appeared to be very relieved that her daughter had been placed in a group home, and she indicated that she wanted to make sure that there was some distance between herself and Laura, at least for the time being.

MRS. H.: . . . I told the probation officer: Laura, when she was in the other home, she was calling me three and four and five times a day. She would get me upset, I would end up crying about it, so I told the probation officer the other day. I said 'I don't want Laura calling me every day. I know what she will do.' He says, 'Well, she's going to call you a few names.' I says, 'No, if she does, I'll hang up on her.' He says, 'Well, you can't do that'. And I says, 'Well, I can.'

I said, 'I'm not going to sit here and listen to a fourteen year old call me an effing whore and all this kind of thing.' I said, 'I won't go through that'. So he says, 'No, but you'll more or less have to play it along.' I says, 'No, I won't do that, either. I've put up with it almost two years of her going on like this.' So I says, 'I would rather she just get herself straightened out', 'cause they get professional help there, too.

INTERVIEWER: So that's the kind of thing you really wanted for her all along?

MRS. H.: Yeah, right, professional help and a home where I knew she was gonna be happy, you know. She came home the other day for her clothes and she was like a different kid. And this was all in a matter of a week . . . But I don't worry about her any more because I know she's in a place where she's going to get the help she needs, and I'm quite delighted with it.

Mrs. H.'s immediate problem was solved, in that she no longer had to deal with Laura's uncontrollable behaviour. However, when Laura returns home, she will be back in a seductive, action- and excitement-oriented environment, and it seems quite possible that Mrs. H. will find herself having to cope with a daughter who has grown more assertive and independent of her control.

Having a problem can mean that one is unable to realize the solution one has in mind. A problem can also mean that one is confronted with a

situation for which one does not have a solution, so that one must rely on others for help. In cases like this, both possible solutions and strategies to achieve those solutions are not clearly formulated. It is this type of problem that is most characteristic of the people who were interviewed.

People who experience problems, especially problems which are liable to be repeated, may learn how to handle future trouble. If their problem is positively resolved, then they will have an already tested strategy should the problem recur. It is not clear from the interview data to what extent this kind of learning happens. It seems that a good part of the learning that arises out of experiencing trouble lies more in the area of whom to turn to for help rather than how to solve the problem directly. When problems are seen to require professional skills and institutional resources, then the most efficacious way of handling those problems is to learn who is most likely to respond to a request for help in a positive and helpful way. Similarly, people who call on certain helpers, such as the police, and are not satisfied with the response they receive, may learn not to call those helpers again for similar or other kinds of trouble.

Overall, problem-solving is most successful for people who can muster the requisite support and other resources for finding a solution. People with substantial networks of family and friends, and people who know how to make use of professional helping agents, are best able to cope with trouble. Individuals who are socially isolated experience trouble more intensely and are less likely to achieve a satisfactory solution without appealing to formal helpers.

Help-seeking is more likely to be successful if the context in which it takes place is clearly defined. The more ambiguous the jurisdiction and authority of the helper and the more ambiguous the expectations of the help-seeker, the less likely is the possibility of a satisfactory solution.

NIC: A FORMAL NEIGHBOUR

NIC's History and Organization

Since the spring of 1969, the residents of the south-east area of East York have had available a locally-based information service which has acted in a number of ways to help people solve problems and to link the area-based agencies with the people in the community. (The immediate area has a total population of about 20,000).

The Neighbourhood Information Centre (NIC) was first established by a group of women who had been involved with the home and school association at the local elementary school, and who were concerned about the quality of life in their neighbourhood. The Clarke Institute of Psychiatry was quite heavily involved in East York during this time. (cf. Canadian

Psychiatric Journal, Special Supplement I, 1972). Through the Clarke's community development programme, a social worker was assigned to the south-east area to initiate intervention towards a programme of inter-agency cooperation.

While the structure of NIC itself is not that of a professionally staffed, bureaucratic agency, it is organizationally linked to formal institutions in the community. NIC was created as a subcommittee of the Southeast Area Subcommittee, which is attached to the Interagency Council of East York, a body comprising the directors of the various agencies within the Borough. As a subcommittee, NIC has three officers: a chairman, a secretary and a treasurer. In the early days of NIC, a finance committee was set up to investigate possible sources of funds, and involved a local storekeeper, the school principal, the provincial and federal Members of Parliament, two aldermen, a social worker from a Borough agency, and a local minister, in addition to the NIC officers. This system of subcommittees served to

TABLE 8

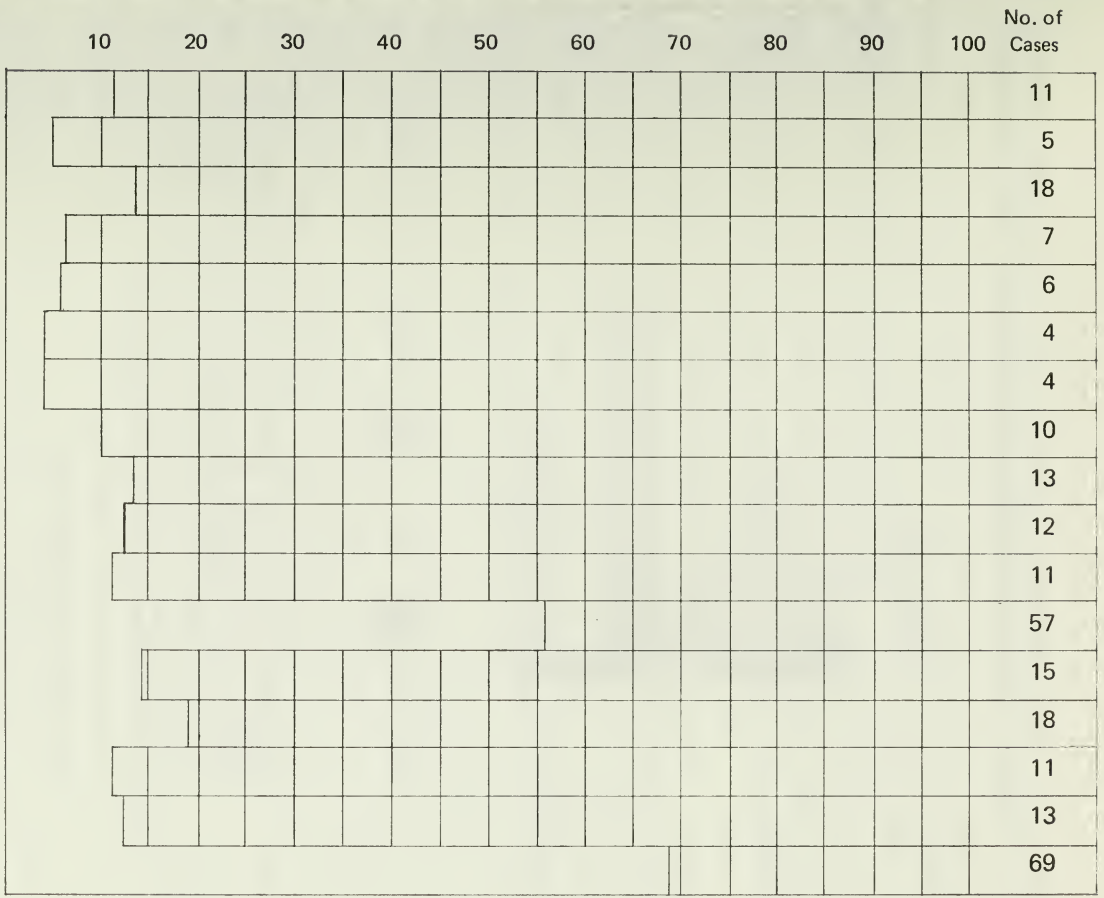
Breakdown of new cases received at Neighbourhood Information Centre, Sept. 1–Sept. 21, 1973

	Number	%	Total
Rooms registry	57	20	
Day Care	69	24.2	44.2%
Other Personal Assistance (Besides Rooms and Day Care)			
Health	7	2.5	
General Personal Support*	6	2.1	
Senior Citizen Help	4	1.4	
Clothing Depot, Furniture	10	3.5	
Youth Employment	13	4.6	
New Canadians	11	3.9	
Legal Aid	15	5.3	
Agency Referral	18	6.3	
Home Help	12	4.2	33.8%
Community Information, Recreation, Education			
Youth Recreation	11	3.8	
Adult Education	13	4.5	
General Information (Community & Metro)	10	3.5	13.4%
Community Organization	4	1.4	
Administrative			
Inter Agency Liaison	11	3.9	
Internal NIC Co-ordination	13	4.6	8.5%

*Many calls in other categories also belong here. Each case counts as *only one* category.

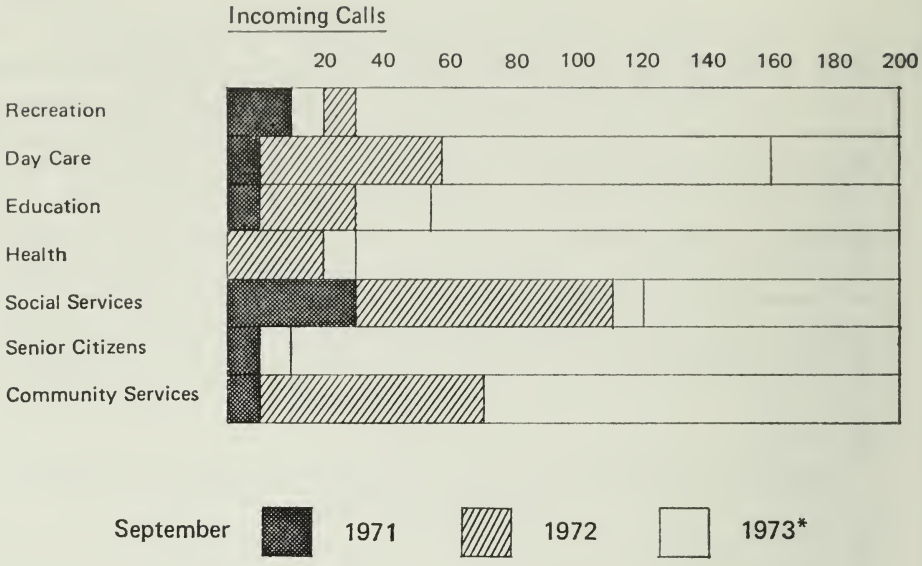
(Courtesy of Neighbourhood Information Centre)

Figure 1. Breakdown of Cases Received at Neighbourhood Information Centre Sept. 1 – Sept. 21, 1973



TOTAL 284

Figure 2. Breakdown of incoming calls for September 1971, 1972, 1973



*This chart was prepared on Sept. 24, 1973 and represents a 4-week estimate based on the actual calls received within a 3-week period in September 1973. Furthermore, the current method of gathering data is based on cases as opposed to calls. Therefore, in order to facilitate a comparison with data previously collected in 1971-72, the number of cases in each category was applied to the actual total of incoming calls and the resulting percentage was indicated on the chart.

Estimated Growth Rate 1972-1973

Recreation	−22%
Day Care	184%
Education + Information (including Adult Ed. and Gen. Info.)	61%
Health	45%
Social Services	6%
Senior Citizens	−10%
Community Services	184%

(Courtesy of Neighbourhood Information Centre)

formalize, among leaders in the community, relationships which had existed previously but on a more attenuated and sporadic basis.

With the help of the social worker and the support of the local elementary school principal, NIC first came into existence around a specific issue: lack of available information on summer camps and day camps. A desk was set up in the school lobby for a week, for the purpose of disseminating the information that had been assembled, but it soon became apparent to the women involved that people in the community were aware of a lack of information about a wide range of services and were expressing a desire to have this information made accessible in some way.

NIC started out as a volunteer effort, operating two hours a day five days a week out of a hockey change hut donated by the Borough of East York and located in the elementary school yard. It has since been able to expand its services, having been the recipient of several LIP grants from the federal government (although currently sources of future revenue are uncertain). As NIC began to gain local prominence residents increased their contacts with NIC. In its second year, the rate of requests increased 75% (Messinger and Parry, 1972). Its quarters were somewhat enlarged to a portable classroom in the same location. Government funding provided salaries for the former volunteers, who were now able to keep NIC open from 9 to 12 a.m., 1 to 4 and 7 to 9 p.m. five days a week and part of Saturday. There is currently a core group of six women who have been with NIC since its inception. NIC continues to use volunteers from the community, and has had other resources available at times, such as three multilingual students who were placed at NIC during the summer of 1973 as part of a provincially sponsored multicultural programme. NIC continues to receive support from the Clarke and from the Addiction Research Foundation, which sends a social worker to NIC regularly to talk with the staff about problems encountered with clients, with their relationship with other agencies, and so on.

NIC's basic function is to provide information; this is how the staff perceives its role and this is in fact where most of the staff effort is directed, although there are a number of important latent functions which result from the information-sharing activities.

NIC provides several services of its own, which are also premised on information dissemination. Card files for a Rooms Registry, a Youth Employment Programme, Home Help and Day Care are regularly updated and are colour-coordinated with a large map of East York divided into sectors. The files contain information about people who are both seeking and offering a certain service. For instance, a person calls to inquire about a shared living arrangement for his aged mother, who has lived in the south-east area all her life, wants to maintain her independence of her children and yet can't really live alone and would like some companionship. The staff person takes

down all the relevant information on a special Rooms Registry "needed" form. She then checks the card file, looking through those cards which are colour-designated as referring to the south-east area, until she finds a card for another senior citizen who has a room available which she would prefer to rent to an older woman like herself. The caller is given the name, phone number and other details and is requested to phone NIC back to advise the staff as to whether or not a satisfactory arrangement had been worked out. If there is nothing available in the card file, the staff member will enter the request in the file and will periodically check the file for any new possibilities while making inquiries of other room registry services in the city.

The Youth Employment Programme matches youngsters in the area who do odd jobs such as window-washing and grass-cutting with people who need the work done, usually senior citizens. The Day Care and Home Help services work in the same way; Day Care refers to a service whereby children are cared for in someone else's home, and Home Help involves supplying help such as housecleaning and meal preparation, usually for invalids or senior citizens. The outcomes of these referrals is generally followed up, so that a youngster who doesn't finish his job can be reprimanded, or a person with a flat to rent who is charging an unreasonable amount can be dropped from the file.

In addition to its own services, NIC provided a setting for an Income Tax Clinic during the winter and early spring of 1973; the Clinic was very well attended, including people from all over Toronto as well as East York. NIC continues to house a Legal Aid clinic on Tuesday evenings. While these services are sponsored by other organizations and are not under NIC control, the fact that they take place under NIC's roof means that there is a possibility of spillover into NIC areas of concern. NIC makes appointments for people who want to speak to the Legal Aid lawyer, and quite often the caller will tell the staff person about his or her problem during the initial call to set up an appointment. In this way NIC is alerted to the possibility that its own services may be of some use. The lawyer may send people to talk to a NIC staff person when he feels that he is presented with problems that are not strictly legal ones, or where a legal solution is judged to be too expensive or likely to be ineffective.

In addition to calls for specific information, or for NIC services or NIC-associated ones such as Legal Aid, NIC receives requests for help with problem-solving of a more diffuse or complicated nature. Such requests might be as follows: "My husband's unemployment insurance cheque is lost in the mail, and there is no food in the house; what should we do?" I have an elderly neighbour who lives alone and I think she is ill; can someone come and look after her?" "I've been on the waiting list for Ontario Housing for three years and now I'm being evicted and I have no place to go; can you help me?"

Reassurance and sympathy are given to the caller, the pertinent information is taken and the search for further information is begun. Other staff members are continually being consulted, with much pooling of ideas and suggestions. Since staff members do not have individual caseloads (although some people who are in touch with NIC over a period of time become closer to a particular staff member), there is nothing inherent in the structure of NIC to prevent joint consultation.

People come to NIC because they saw an ad in a local newspaper, because the school teacher or public health nurse suggested it, because their neighbour's son got a job cutting grass through NIC, or because it was recommended by the local minister or the corner grocer. Within its own locality, NIC is continuing to be discovered and used by residents. Increasing demands are also being made by residents and agencies outside the local area. NIC staff are alerted to requests for help that they call "the tip of the iceberg", where an initial request (e.g. I'm looking for a place to live) leads to the revelation of underlying, more serious problems (e.g. My husband is threatening my children and me, so I have to leave my house).

NIC's function at the level of the individual can best be characterized as that of being a "good neighbour". The women at NIC are not professionals; beyond a commitment to provide service and support they do not adhere to a professional or similar ideology that might conflict with the values of the people they deal with. They live in the area they serve and are committed to the needs of their neighbourhood, and understand the values held by their community, since they are of that community themselves.

Thus when someone phones NIC with a problem, they are extended treatment as from one neighbour to another, in terms of warmth and friendliness. People receive help and advice that might not otherwise be available, but they also get support and understanding. This is particularly important for people who are socially isolated, without family and friends to provide help in times of stress.

The atmosphere at NIC is similar in some ways to a neighbour's kitchen. People who live within walking distance are often encouraged to drop in and have a cup of tea. Being at NIC is very much like visiting with a neighbour doing her chores; the staff at NIC will chat and visit, interrupting themselves to answer the phone or jot down messages. The genuine concern and supportiveness extended by NIC has been of real importance to those individuals who were without close friends or family and who felt themselves to be overwhelmed by their difficulties. It is the attitude and behaviour of the NIC staff in conjunction with their information-giving skills that has resulted in successful help-giving to people whose problems are exacerbated by their social isolation.

Helping Social Isolates

Individuals who are without close family or friends to help in times of stress are likely to perceive trouble as objectively more serious than would people with informal help available. These individuals may also be more dependent on institutional sources of help. NIC's type of neighbour-like, supportive interest and help is most clearly demonstrated in terms of dependent, isolated persons.

Miss D., a nineteen-year-old immigrant from the West Indies, was living in an East York rooming house with her cousin while she went to school. Through another information centre, suggested by a friend, the two women learned of NIC, and were able to obtain a few babysitting jobs through NIC's day care service. Trouble began when Miss D.'s student visa expired and she was unable to apply for landed immigrant status from within Canada. While she was trying to decide on a course of action, one of the men who was living in the same house began to make advances towards her, which frightened her. Her cousin solved her own immigration problem by marrying a Canadian citizen. Thus Miss D. was left with no job, precarious legal status as an immigrant and a home in which she no longer felt safe. She and her cousin had a falling out, so she was without anyone close to whom she could turn. She called NIC, which was able to connect her with Mrs. J., an infirm, elderly lady who lived alone and who needed someone to help her at home. This turned out to be a very satisfactory temporary arrangement while Mrs. J. waited for an opening in a nursing home, and while Miss D. tried to solve her immigration problem. Mrs. J. had care and companionship, and Miss D. had her housing problem solved. Her position with Mrs. J., assisted her to get a work permit as a maid, a temporary solution, which she accepted reluctantly because of her secretarial and computer skills. After consulting the Legal Aid lawyer at NIC, Miss D. successfully applied for landed immigrant status during the government's special leniency period. NIC helped her with this by giving her a letter offering her a position, which Miss D. feels was instrumental in her being accepted as a landed immigrant. In addition, one of the NIC staff who used to be a door-to-door cosmetics saleswoman got Miss D. started off selling for the same company and helped her with the necessary neighbourhood contacts.

Miss D. was not without close relationships; she came from a large family, with many cousins and friends. While she was not truly socially isolated in the sense of being without any meaningful relationships, she was unable to call upon those relationships when she needed them. NIC was able to help her deal with an unfamiliar and increasingly hostile environment, so that she has been able to arrive at solutions to her problems and to feel optimistic about her future. Through NIC, Miss D. went to babysit for Mrs. B. They have now become friends, and Miss D. still visits

Mrs. B., although the latter has moved away from the neighbourhood. This is a good example of NIC's switchboard role. When asked to name people she felt closest to, Miss D. stated:

> Well, the Neighbourhood Information Centre. They all make me feel at home, make me feel that my problems weren't there when they were there. More or less, they make me feel relaxed and they help me in every possible way.
>
> . . . because they're here, just on the spur of the moment, on the scene, and they're willing to help you.
>
> . . . They make me feel relaxed, at home, and their hands were stretched out when I needed help.

Mrs. A. is a divorced Armenian woman who lives in an OHC apartment up the street from NIC. Her involvement with NIC centred around her five-year-old daughter's illness and death. The initial contact stemmed from her desire to enroll her younger son in a nursery so that she could have some rest from his demands, since she was exhausted physically and emotionally from nursing her dying child. NIC made the school arrangements with the Board of Education and found a service club that was willing to pay for bus transportation. NIC's involvement with Mrs. A. continued after her daughter died, and NIC has been encouraging Mrs. A. to meet regularly with a social worker, since she continues to be severely depressed and is unable to cope with her son's constant demands for attention and reassurance.

Mrs. A. has a few relatives and friends in Toronto, but none close enough to help ease the burden of caring for a dying child at home. A NIC staff person who had been phoning and visiting Mrs. A. regularly stayed with Mrs. A. at the hospital the day of her child's death, took her home and stayed with her that night, made all the funeral arrangements and stayed with her during the days that followed. NIC staff are continuing to contact Mrs. A. and to encourage her to become involved in activities such as mothers' groups.

Mrs. A. continues to be very depressed, and she has not yet accepted her daughter's death. Without NIC's intervention, it is probable that she would have been quite unable to cope with funeral arrangements and so on. The knowledge that NIC was constantly at hand and the reassurance that she derived from this is apparent in the way she described her feelings about NIC.:

> INTERVIEWER: And do you feed close to NIC?
>
> MRS. A: Oh, yes, like a family, you know. It's like I'm going to visit my family, especially Mrs. Sommerville. She was like a mother with me. She was near with me the day when my daughter passed away. [Starts to cry].
>
> . . . I said, God bless this kind of people, you know. If I don't have this kind of people, what am I going to do myself alone, you know?

> . . . [Mrs. Sommerville] stayed with me every day until the funeral was over. Well, I'm proud of that, you know. They made a very good job [of the funeral], you know. Sometimes it's your relatives that do that, what this kind of people have done for me. And I'm really proud [sic] for Neighbourhood Centre and for everybody. They helped me and they give me courage.
>
> . . . like this kind of office [NIC] you know, to help people, to give them courage. And not the income, I mean. The income is not necessary more than you find somebody to talk to sometimes. That's important to people when they need sometimes to talk. I don't know, I think we need it.

The quality and importance of the support that NIC extends to people such as Mrs. A. is reflected in the evaluation given by Mrs. B.:

> I don't know. More or less I guess they just know exactly what a family is going through, especially when there's no father in the family, and they know how to cope with everything. Even more or less just talking to you they know exactly what to say and what not to say. Sometimes you get in a bloody mood and you don't know how to get out of it. So I go over and I have a talk with them or I call them on the phone if I have a few minutes and they'll talk to you regardless of what you tell them. It's not like your friends when you call them and they, 'Oh, there's somebody at the door, I've got to leave.' They're not like that. They'll just turn around and put it to someone else and they'll keep talking to you. They're there and that's it, they'll help you, there's no way out of that. I don't know how to put it, really, but, well, they're more like a sister to me sometimes.

Relationship with Agencies

In response to many of their requests, the NIC women have increasingly frequent contacts with representatives of agencies within East York and other parts of Metropolitan Toronto. At first NIC initiated most of the contacts, making inquiries on behalf of individuals, or informing agency workers of people in need of particular services. The NIC staff came to know the social workers, public health nurses and others having caseloads in the southeast and neighbouring areas. A pooling of information about local residents began, and the flow of communication became somewhat more balanced, as agency workers realized that NIC had knowledge of community resources that was not available elsewhere. Social workers, community police officers and nurses ask NIC where a patient of theirs on Mother's Allowance could obtain a used stove for free, whether they know of someone who will go to the home of a bedridden woman to do some housecleaning, whether there is a room available for a man about to be released from a psychiatric hospital.

The positive view that local agencies have developed of NIC stems from the fact that NIC has often been able to help provide real, material help.

The NIC staff have been individually involved in a number of community organizations and local projects, and these associations continue to help keep them tuned in to problems in their neighbourhood. Two staff members have been affiliated with the Y, one doing outreach work with immigrants, and another teaching English classes for immigrant women. One staff person has been working with retarded adults, and another one has been involved with an association for children with learning disabilities. There are also church groups with which the staff and their families have been affiliated, as well as home and school associations, Scouts and Girl Guides, and so on.

NIC keeps informed about agency activities and services through its organizational links with the Southeast Area Subcommittee, and through it with the Interagency Council of East York. NIC staff attend committee meetings regularly, and are often requested to participate in meetings of specific agencies, such as the Visiting Homemakers. Political representatives are often called upon by NIC to help solve problems by giving relevant information or perhaps by exerting influence to activate some bureaucratic process. NIC's efforts to involve formal helpers are not always successful, as was the case for Mr. and Mrs. N. on whose behalf numerous people were contacted. However, the staff has learned the appropriateness and efficacy of requesting assistance or information from the various professionals and institutions, and of referring people to them.

NIC's knowledge of the community itself combined with its relative ease of entry to various social agencies and institutions enhances its ability to act as a switchboard, linking people both within and between the informal and formal levels of helping systems. Because NIC's primary function is the gathering and passing on of information, much of the staff's time is spent renewing and developing contacts at various levels in the community. Other organizations, on the other hand, are far more involved in their internal activities, practicing professional skills and looking after bureaucratic requirements. The numerous contacts that NIC has at its disposal are useful to agencies which do not have the same outward orientation. When asked whether NIC was helpful in their work, the C.S.O.'s cited NIC's contacts.

INTERVIEWER: My own reaction to NIC is that it is potentially and really a very big help to what you do, in the sense that they get a hold of a lot of trouble that, if they weren't there, would come directly to you. Do you think that's a fair assessment?

OFFICER A: It works both ways. We use them, too. We use them as well.

INTERVIEWER: You mean to alert them to trouble in the neighbourhood?

OFFICER B: No, sometimes they have "ins" to different agencies, personal contacts that we probably haven't established.

INTERVIEWER: Oh, I see. So you use them.

OFFICER A: Yes, it's a two way thing. That's part of the job, isn't it?

NIC's knowledge of much of what goes on in their locality is generally not available to most agency professionals. Whereas a public health nurse or a social worker may know some particular facts about a family, NIC may be able to provide information about the family's general context, so that the professional's knowledge becomes more meaningful.

OFFICER A: We're getting a lot from NIC. Positive reinforcement, what have you, that works both ways.

INTERVIEWER: Do they kind of clue you in in what's happening in the community, or at least in their part of the community?

OFFICER B: One should get that pretty well clarified. When you think of cluing in, some people might interpret that to mean, well, NIC would phone in and say, 'Hey, policeman, there's trouble down there, you better go down there and clear it up or make a bust', or stuff like that. That's not the way it works. They would know about a guy who goes to school with no breakfast, because his parents are on welfare and they budget for booze and not for food. You know, if we could help there... Before it gets to a situation where the guy is beating up on his old lady, then we can go in initially and try to sort things out.

NIC's ability to offer friendliness and an attempt to help on an individual level has implications for agencies as well, by providing an alternative for people who might otherwise seek help from institutions. One of the issues that has disturbed NIC people most, judging from their remarks, is what they refer to as "gaps in service", where there is an identifiable need which does not fall under the aegis of a particular agency. In many instances, NIC has been able to fill some of these gaps through their knowledge of local resources. One of the most significant gaps seems to be the lack of a listening post, where people could express themselves and receive a sympathetic hearing. A woman phoned to find out about social activities for senior citizens. She talked to a NIC volunteer for half an hour or more, complaining of her ill health and inability to make ends meet because of high prices. She remarked at the end of the phone call how much better she felt for having been able to let off some steam.

When people phone NIC to complain or to express anger, loneliness, depression, and so on, and when they ask for a type of help that other agencies don't provide, NIC is in fact acting as a buffer between individuals in the community and the agencies. The agencies are protected from requests that they perceive as not being part of their function and which they would nonetheless have had to deal with if not for NIC's presence. The individuals are protected from rebuffs and continual referrals from agency to agency.

The positive aspects of this buffering function vis-à-vis formal helpers was demonstrated in the following example which involved the police (as well as the court and a social worker from a child welfare agency). Mrs. C. had phoned NIC to find out about renting a house. She subsequently revealed her husband had been beating her and her children and that after some

hesitancy, she had laid a charge of assault against him without his knowledge several months previously. At that time, a Community Service Officer and a social worker from the Addiction Research Foundation went to see Mrs. C., since Mr. C. had a drinking problem. No course of action resulted at the time since Mr. C. refused to see the social worker, but Mrs. C. felt that she had received some psychological support. By the time Mrs. C. contacted NIC she was 8½ months pregnant, and the NIC staff, on learning that her husband was becoming abusive again and that Mrs. C. feared a violent outburst when he learned about the assault charge, contacted the C.S.O. and alerted him of the worsened situation. The C.S.O. was skeptical about the severity of the case; marital disputes tend to be very ambiguous for the police, since they often see spouses decide to lay charges only to withdraw them later. The officer involved called it another case of "can't live with him, can't live without him", but he agreed to keep an eye on the family. Then when the situation did deteriorate very soon after, the police were prepared for it. In addition, the pressure on the C.S.O. to act "like a social worker" (i.e. to become involved in the family's other problems) was alleviated by NIC's presence. So when Mr. C. was eventually served with a warrant and he reacted with violence, the police, who were waiting outside the house in case of trouble, brought Mrs. C. and her children to NIC until she could be taken to the emergency hostel for mothers and children located downtown. If NIC hadn't been available, the police would probably have had to make other arrangements themselves since Mrs. C. had no friends or family to turn to for help. (NIC continued to be concerned with this family, making arrangements for the children to be looked after while Mrs. C. was in hospital, etc.)

The positive attitude that local professionals are developing toward NIC are reflected by their increasing use of NIC's services. The C.S.O.'s demonstrated this positive attitude during their interview. While earlier they had been speaking quite critically of institutions such as psychiatric hospitals for being inaccessible when needed, their attitude and general tone changed markedly when asked about NIC.

INTERVIEWER: How do you feel about the Neighbourhood Information Centre as a sort of semi-formal agency?

OFFICER B: Well, I'll tell you this. My feeling is, and I'm sure that Officer A. will back me on this, I think that the Neighbourhood Information Centre is one of the most efficient agencies I've ever seen.

OFFICER A: There is a need and they are doing their job in fulfilling that need. I think they are doing a fantastic job. That's my personal opinion. A fantastic job.

INTERVIEWER: Do you think there should be more of these local, intense . . .

OFFICER B: In terms of quality.

OFFICER A: Not just for the sake of saying, 'Hey, look, we've got a Neighbourhood Information Centre'. I don't think they can all be as good as this particular agency. But the people there seem to be very concerned, very sincere . . .

OFFICER B: Involved.
OFFICER A: Very stable.
OFFICER A: That calibre of service, yes, more of it.

Summary

NIC's primary function on the more obvious level is the collection and dissemination of information on a wide range of resources, needs and problems. This information is obtained from and shared with individuals and with professionals and agency representatives. As part of its general information processing activities, NIC provides particular services of its own. These are unique to NIC because they involve a pulling together of local, unorganized resources in the community which would not be otherwise available. NIC perceives itself as a switchboard in the community, linking people with needs to people with resources, and it does in reality perform in this way.

NIC's genuine interest in and commitment to people in trouble have been of particular importance to those who are socially isolated and who have come to NIC with a problem. While the NIC staff place great emphasis on a supportive attitude, they may not have realized how meaningful this could become to individuals who are without their own interpersonal resources. So in addition to information, NIC extends warmth and support to people who probably would not find it elsewhere. NIC's ability to provide and gather information would likely be greatly impaired if it were not accompanied by a conscious desire to be a "good neighbour".

NIC facilitates the help-giving process by acting as a buffer between individuals and agencies. When requests for help are channeled through NIC, individuals may be protected from the rejection or continual referrals that can result from making inappropriate demands on institutions. Agencies may be protected from being diverted by problems they cannot or will not handle. NIC often acts to prepare both agency and individual for contact with each other, so that the likelihood that the contact will be a positive one is increased.

NIC acts as a focal point with which people in the community can identify. Since NIC's inception, it has been a stable presence in the neighbourhood. It is becoming increasingly recognized as a local institution and a familiar landmark.

Receiving help from a group of friendly neighbourhood women who can always be found in the same place day after day may contribute to people's sense of stability and continuity, as well as helping to develop a sense of belonging.

CONCLUSIONS

Trouble in East York is often denied, and help may not be sought even when trouble is acknowledged. People vary in their perceptions of trouble, but it seems clear tha ttrouble is a worse experience for those without close, meaningful relationships. When assistance is requested, the preferred helpers are family, friends and others to whom one feels closely linked. Professionals are not usually approached for help. The exceptions to this pattern are the problem of illness, which is readily acknowledged, and the doctor, who is by far the most frequently consulted among formal helpers.

People have different ways of coping with trouble, but overall it appears that trouble is more serious for those who are unable to muster adequate resources, either materially or interpersonally. Lack of proper food or shelter, or inability to pay for high-quality professional service has an obvious impact on how one can deal with trouble. It also seems that lack of the support and warmth that come from close-knit interpersonal networks makes it more difficult to arrive at solutions. Inadequacy of material resources may be a fundamental influence, but social isolation also has an effect of its own. Of course, some of the people interviewed found themselves without either of these. For them, trouble is more stressful and the ability to cope with it is impaired through lack of resources; thus trouble is more likely to recur, further depleting whatever meagre means they have available.

Even for people with many informal helpers to which they can turn, the resources available at the institutional level may also be necessary for an adequate solution. While family and friends may encourage the use of agency services, in other instances they can also inhibit such use; in any event, there is a significant distance between individuals and institutions offering various kinds of assistance.

Local, autonomous non- or quasi-professional services such as NIC or the Law Reform Project appear to be an effective way to bridge this distance for at least part of the community. It may be very threatening for people in trouble to approach agencies, since they may not know what costs will be exacted for asking for help. An informal atmosphere, the absence of an impersonal receptionist and appointment schedule, the presence of friendly people who don't appear to claim a higher social status, all contribute towards providing a setting where acknowledging trouble may not seem to be such a dangerous thing. The directness of approaching an agency such

as the police can be frightening; the Law Reform Project in particular was valued by some informants because it didn't seem to demand as great a personal commitment and exposure as did the police.

The fact that NIC is locally-derived and intensely involved with its part of the community is important in considering its effectiveness in helping people with problems. The NIC women live among the people they help, and by and large they share the same value system. As one staff person put it, "We know what's acceptable and what isn't". NIC's acceptance in the community means that it can function as an instrument of social control, inasmuch as it makes decisions and judgments that are within the framework of the community's value system. N.I.C.'s ability to act in this way is buttressed by the support it receives from other persons who are both visible and important in the community, such as the school principal or local minister.

This social control function protects the community, as when a landlord is dropped from the Rooms Registry file because he charges too much, or when a NIC staff person calls the police about a car full of teenagers driving recklessly in the school yard. In a community like East York, disapproval or a reprimand by a "good neighbour" like NIC may have a greater impact in certain contexts than would be the case for a formal controlling agent such as the police.

In another sense, acting implicitly as an agent of social control can keep some people out of the helping process. NIC is on guard against people who might take advantage by manipulating themselves into a position where they receive service when they "don't deserve" it. People who work the system are a threat in some ways, since they appear to want more than their fair share of scarce resources. If they were to regard people like this as legitimate claimants, the NIC staff might feel that they would be creating and encouraging dependence and therefore keeping others in need from receiving their due share. The fear of being manipulated may prevent the realization that these so-called "shoppers" have in fact developed a useful and effective technique of augmenting their own limited means of coping with the stresses of daily living. If lack of resources is a basic factor in one's inability to cope with trouble, as has been suggested here, then techniques which partially overcome this lack should perhaps be viewed in a more positive manner. However, cases such as this are the exception rather than the rule at NIC, and in any event the NIC staff is by far more concerned with providing help rather than screening out suspect claims for service.

The effective way in which NIC functions to provide different types of information to various levels within the community leads to some unanswered questions about the applicability of NIC-type services in other communities and about the future of NIC itself. One of the obvious reasons that NIC has succeeded as well as it has is that the women who run it are extremely competent at what they do. The past association of the NIC women in other

local organizations, the intervention of the Clarke Community Development Program, and the support of the school principal and other members of the community were only some of the factors that enabled these people to remain together as a group. This raises the question for further consideration: how are competent, interested people successfully recruited from within the community so as to provide a useful service at the local level?

Currently NIC has been supported by short-term federal government LIP grants. Since this source of funding is uncertain, the NIC staff have felt unable to plan for more than about six months ahead. This limited time perspective means that they focus on present rather than on future problems. More secure funding arrangements could mean that long-term planning would be feasible, which would then enhance the provision of service. A more stable existence and secure future, along with the possibility of long-range plans, could also mean that NIC will develop a different perspective of its needs in the community.

The need to continually reapply for funds also influences NIC's hidden controlling role. Interfering with the activities of established institutions, exposing government neglect, and demanding action from community decision-makers result in a high degree of visibility, which in turn leads to an increased likelihood that the status quo will be protected from attack or pressure by a withdrawal of financial support. The values and aims of the NIC staff do not involve this kind of public visibility, nor do they include any kind of militant intervention or demands. However, the fact that they must constantly be aware of what they perceive to be the government's criteria for their behaviour as an organization so as to keep receiving grants means that they are covertly led away from goals which the government might find "objectionable" and therefore not deserving of funds.

NIC's apolitical nature has meant that it has not been perceived as a threat either by the community in general or by the politicians and bureaucrats who control budgets. In addition, the NIC staff have a certain deference or respect for authority, which also helps to explain their non-assertive attitude. The implicit social control function of NIC, in conjunction with its "low profile" in the community, acts to keep the present system of professional and institutional service operating without being challenged or threatened by dissatisfied individuals or groups.

To the extent that NIC's position vis-à-vis the formal system is recognized and rewarded by larger grants, greater public acknowledgement, and so on, the NIC will likely continue to provide its present services within an unpoliticized context. In addition, the security of regular funding may encourage NIC to consider new types of services. There are many immigrants moving into the area; NIC has only had moderate success with a multicultural programme designed to reach non-English-speaking

residents. To the north and south of NIC are public housing highrise and townhouse developments, whose residents are, on the whole, poor and with many problems. Will NIC experience pressure to diversify and expand their services in order to become more accessible to these groups?

The NIC staff do not want to become indispensable; they are currently spending more time finding out about existing government programmes so as to make better use of existing facilities. However, larger grants could encourage NIC to develop new types of service or to try to make itself available to a larger part of the community. If this were to happen, the intensity of involvement that comes with NIC's small scale could be lost, or at least diminished. Also, expansion would likely lead to the development of a greater and more formal division of labour, as well as a hierarchy and increased bureaucratic requirements. This could also eventually result in an increased distance between NIC and the community, and a clearer alignment between NIC and the institutional system.

This speculation would, of course, become academic in the event of NIC falling victim to government cut-backs in spending, a possibility which is probably more likely than an increase in funding on a regular basis. In that case, NIC's existence would be seriously jeopardized even if alternate funds were found. Organized "'charities" like the United Way would not provide enough money for NIC to be able to continue as it is presently constituted. The NIC staff would be economically compelled to find other jobs, and NIC would likely be reduced to a weekend or evening activity at best.

It has been suggested here that a hidden function of NIC's helping role is to divert pressure and dissatisfaction away from agencies and institutions, and thus to contribute to the maintenance of the existing system. To the extent that institutions are selective about the people they assist, that unequal distribution of resources is the root cause of many problems, and that this inequality is a basic premise on which the institutional system is built, NIC's role as a buffer protecting the system in some ways serves to keep people in need from availing themselves of the formal system.

If NIC didn't exist, would discontent in the community become organized and be expressed to agencies and institutions collectively or in some other way? This is unclear, but it seems reasonable to speculate that as NIC developed as a response by some people to a perceived lack in the services needed by different groups within the community, so other responses, perhaps more politicized or critical, would arise.

While having suggested that NIC may in some ways unintentionally be supporting the inequalities in the existing system of institutional assistance, this is in no way meant to imply that NIC's helping role should be altered or abandoned. On the contrary, this analysis indicates that the intense

interpersonal support that NIC provides, the protection from institutional scrutiny and demands that it affords, and the organization of resources dispersed throughout the local community that it undertakes are compelling reasons for NIC's continued support. An organization which is able to link socially isolated individuals with other community members is a rare and much needed resource.

As protection against pressures to expand and to move away from the grassroots level of interaction that now exists, NIC should be encouraged to strengthen its role of advocate on behalf of local residents, to guard against any movement toward cooptation by institutions, and to keep its size small so as to maintain its commitment to the locality and its neighbourly perspective and attitudes towards people in trouble. Limited growth would facilitate outreach work, whereby isolated persons would be made aware of the existence of an accessible source of help and warm interpersonal contact.

The Community Law Reform Project, through similar skilled intervention and advocacy on behalf of local people, began to be recognized as a valuable resource in the southeast area. This analysis indicates that locally-based, intensively involved informal organizations such as NIC and the Community Law Reform Project are a potentially useful way of making skills and resources available to people in need. A word of caution: short-lived community study projects can have negative consequences, in that they may cause resentment by people in the community being studied, and they may encourage dependence by educating people to use their services only to withdraw soon after. During the course of the interviews, a number of people made strong pleas for the reinstatement of the Law Reform Project; some of them had gone to the Main Street office only to find it closed with no forwarding address or phone number. While we are becoming quite sophisticated about the processes and consequences of community organization and intervention, it should be remembered that there are basic responsibilities to be met toward people who come to use and to trust the services provided as part of the research. In the same way, inconsistent, short-term funding can negatively affect efforts such as NIC. Policy considerations must account for the impact on the community of project termination or withdrawal of funds.

NOTES

[1] This paper was written in conjunction with two research projects: the Community Ties and Support Systems project, directed by Barry Wellman, Centre for Urban and Community Studies, University of Toronto and the East York Community Law Reform Project, directed by John Hogarth, then of York University.

The Community Ties and Support Systems project has been assisted by the Canada Council, the Laidlaw Foundation, and the Province of Ontario (Health Research Grant No. P.R. 196). The survey data for this project was collected in 1968 by the Community Studies Section of the Clarke Institute of Psychiatry, D.B. Coates, Head. The East York Community Law Reform Project has been sponsored by the Law Reform Commission of Canada. I am grateful to these institutions for their generous support of this research.

The Yorklea data set on which the Community Ties and Support Systems project is based covers, among other sorts of information, eleven problem areas: health, work, income, marriage, children, parents, loneliness, sex, getting along with people, self dissatisfaction, suffering a great loss. This list of problems was taken from the survey done by Elinson *et al.*, 1962. Respondents were asked if they had experienced any of these problems within their lifetime, and to rank them as first, second and third most disturbing. They were also asked to cite any of these problems they had experienced during that time. The list of life events and major changes (see Table 2) was adapted from the study conducted by Holmes and Rahe, 1967.

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Criminal Justice and Social Justice

Management of Conflict and Social Disorder by the Metropolitan Toronto Police Force

Prepared by
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with the co-operation of the Metropolitan Toronto Police

CONTENTS

PREFACE

The police, more than most social agencies, are in a position to acquire a profound knowledge of the demands of the community for justice and to play a leading role in its administration. They are the ones who directly experience confrontation with the law and social conflict. The demand for assistance, the need for intervention in individual cases to prevent community disorder, and the public agreement or disagreement with the laws, the pressures of the police force staff—the individual officers inevitably experience these demands, needs, dissents and tensions in a milieu of crisis. Further, the experience of the police demonstrates that legislation can never deal completely with the wide variety of social and behavioural problems that confront society.

The intent of presenting this paper to the Law Reform Commission of Canada is to present a community-oriented view of the Toronto police as they serve the public and the criminal justice system. The report, while descriptive, suggests several important issues and areas for further study and analysis. The next step as a follow-up of this report would be the development of changes in policy or practice in the light of present reality. It is hoped, then, that this brief summary will give meaning and recognition to the necessity of including police expertise and experience at the outset and throughout the process of reform of the law.

As this paper concerns itself with the human conditions of the police task in relation to a system of laws, there is no mention of the technical or mechanical support structures within the Toronto Police Force. Although communications systems, vehicles and other enforcement hardware, administrative policies and structures are vital to the police task, discussion of them in this paper would obscure the extent to which the performance of the individual police officer is affected by the expectations of the public, the internal demands of the police force itself and the officers' backgrounds and values.

The information and quotations used in this report and the understanding of the operations of the Toronto police have been acquired throughout a five-year period of close association. Initially, my role with the police was as a community resource person, primarily concerned with mental health referrals. While employed at Mental Health Metro, I would be available 24 hours a day for consultation on difficult or hospital-rejected cases with which

the police came in contact. Through the process of assisting the officers to find appropriate psychiatric assessment or placement, I came to grasp the meaning of their position in relation to medical and social agencies after 5:00 p.m.

I participated with senior officers and community agencies in numerous discussions and meetings regarding issues that police methods could not then cope with: drug users, rock festivals, cultural differences of ethnic and youth groups. For the past three years my role as a community resource person or "troubleshooter" to Toronto police for specific cases of community problems has continued city-wide. The greatest involvement has been with the Community Service Unit. The relationship has been informally professional and social, providing the maximum opportunity for discussion and idea interchange. During the course of the East York Community Law Reform Project my relationship and role with the police has been no different, except the role has been formally approved by both the police and the Law Reform Commission.

I have always been granted the status of "one of us" by the police and have been afforded the opportunity to observe occurrences, participate as a mental health worker in court cases, given informal wardship of certain youth by the police and follow-up referral counselling by the courts, participated as a community worker in national and regional police seminars and, most importantly, have come to know many officers professionally and informally. In writing this paper it has been extremely difficult to remain "of two minds": that of a community worker-citizen and that of an almost "one of us" to the police.

I would like to express my deepest appreciation to Chief Harold Adamson and Deputy Chief Ackroyd for their assistance, patience and trust. To the men of the Toronto force I owe a large debt for their understanding and interest in giving me the insight that provided the material for this paper. I am aware that there may be some details or circumstances of police life that others may deem relevant in a study such as this. I can only hope any such omissions do not affect the main thrust of the study and hope that this study will act as an initial catalyst for further input of knowledge and experience from the police themselves.

1. INTRODUCTION

> The crisis in criminal justice is exacerbated by the absence of any consensus in the perception of the functions now being served by criminal law. To Blacks and other minorities, criminal law may appear as an instrument of oppression; to the poor, a barrier to perpetuate an unjust status quo; to the young, a coercer of conformity to the middle-aged, middle-class, Puritan virtues; to Mid-America, a frontline defence against anarchy; to legal theorists, a delicate balancing of individual and social obligations; to politicians, an expedient means of relieving pressures to 'do something' about politically insoluble problems; to social scientists, a power clash among competing interest groups; to moralists, a reaffirmation of community's ethical values; to psychiatrists, a quasi-religious ritual that relieves tension of moral conflict among law-abiding citizens; and to missionaries of all persuasions, a challenge to reform those who whether from illness or perversity, have strayed from the straight path.[1]

It is interesting to note that in this statement there is no mention of the one "group" that actually begins the criminal justice process—the police. The role of the police has been termed one of strict "law enforcement", but this is fast becoming a misnomer. With the crisis in criminal justice and change in moral and social values today, the policeman has become more an arbiter of social values concerned with resolving problems through unofficial social controls.

In this age of the specialist, every problem—legal, social or medical has its special "fixer" and members of the public delegate more and more of their individual responsibilities to the specialists. Unfortunately, the specialists and their institutions frequently are unable to resolve the complex problems that are referred to them. As a consequence, the policeman may be called in to fill the gaps caused by the breakdown of social service agencies in handling crisis situations. Because of his visibility, 24-hour service and role as "protector" the policeman is used as the "specialist" for many non-criminal problems. It is interesting to note that in interviews with citizens concerning their problems and their involvement with the police, many people see their problems as legal or pertaining to the law. It is hard to determine if they originally considered their problems of a legal nature prior to the call to the police or if police intervention denoted the problem as legal, after the fact.

If we are to understand the nature of crime and the function of police in modern society, therefore, it is imperative to the process of law reform or justice planning that the experience and views of the policeman be considered. Because of the unique position of the policeman at the meeting of law and people in trouble, it is increasingly evident that policemen have a valuable contribution to make to the reform of the criminal law.

"Crime does not look the same on the street as it does in a legislative chamber . . . every policeman, however complete or sketchy his education, is an interpreter of the law".[2] Therefore, it seems ludicrous to undertake any change in criminal law or justice planning without the inclusion of real participation by the police. Serious consideration must be given to how police interpret the law, how they see it serving public expectations and how police resort to social justice and informal systems to screen people out of the formal criminal justice system.

Believing that the Metropolitan Toronto Police have found a way at least for the time being, of maintaining a fair balance between strict law enforcement and unofficial social control demanded by the public, the East York Community Law Reform Project undertook to explore in detail the attitude and views of the Toronto police towards their work and the criminal justice system generally. This study does not give priority to an examination of functional structures and administration. Rather it looks at the task facing police and the importance of discretion in responding to the demands placed upon them within the framework of the criminal law.

2. CALLS FOR SERVICE TO THE TORONTO POLICE DEPARTMENT

In 1972 there were 860,772 calls from the public to the Metropolitan Toronto police switchboard.[3] According to some studies in the United States[4] as much as 86 per cent of these might be expected to relate to demands for information or social services including calls for ambulance, personal assistance, property damage, vehicle escorts, accidents, illnesses, and so on. It is difficult to say, though, that only 14 per cent of police calls relate strictly to criminal law or law enforcement. If a wife calls the police to calm down an angry husband, is the use of police authority only a social service even though no charge is laid? Is a warning to a speeding motorist only a "service" type incident even though no charge is laid?

The police involvement in these calls suggests a complex use of authority discretion and power to deal with a wide range of cases either by way of mediating disputes, issuing warnings or diverting social problems from the criminal justice system.

> You never know what you are goin' to get thrown at you . . . in one day you will get a call to a disturbance . . . you get there and find some woman screaming at the husband and threatening to kill him and herself . . . She is violent—one bad move and she'll go over . . . you gotta play shrink and Mr. Cool and at the same time see what can be done for her . . . the next call is to investigate a theft . . . and you find that one neighbour has accused the other of stealing some garden equipment . . . after some investigation, you find they have been feuding for years . . . next you investigate a missing female . . . it's apt to be a 16-year-old has split her home . . . and

> the parent cannot understand why she would leave . . . you find that they have accused her of being promiscuous and immoral and that there have been many quarrels prior to her leaving . . . You know, all the people figure we got the magic answer and we can make everything normal right away.

From this policeman's observation, the range of trouble affecting people becomes evident, it is also clear that people expect the criminal justice system to deliver a wide range of services. The 24-hour visibility of the police, their historical tradition of "helper" and their role of authority make them the public's number one troubleshooters.

> I had a woman call the station to have an officer come to speak forcefully to her 34 year old son, to make him go down to the Clarke Institute for his aftercare appointment . . . He hadn't been taking his medication and he was getting funny again and she was getting scared. . . .

However, because the police are not equipped as a health or social service agency, the community's non-criminal problems can and do end up in a criminal justice system that is unable and unsuited to resolve those problems. The marital dispute or domestic quarrel, where there may have been an assault by one of the partners against the other, often results from deeper problems within the family relationship. Is it to be resolved in our present system of justice? Although an offence under the criminal code may have been committed by the husband or wife, is any purpose served by taking the dispute through the adversary system of the courts? The problem that faces the policeman is to decide the best resolution for the situation at hand.

> You know damn well that most of these crisis things have been going on for years then they erupt and the best we can do is hope to cool it down and hope that they can get some help to stop it happening again. But we can be pretty sure that they'll be back in the same boat again and we will have to go back and referee and call the fight. . . .

There are three courses of action open to the policeman when he has investigated a reported situation: he can take formal action, that is he can invoke the criminal process by charging an offender; he can take informal action, by referral to a social agency without charge, or use a charge (later to be dropped) to force a referral; or he can resolve the situation at the time without taking any external action, involving no follow-up by himself or social agencies. He may not even fill out an "occurrence form" which would be the only record of the incident.

The action a policeman takes depends not only upon the statutory rules, or the policies and procedures of the Force, but also upon many community factors that affect the ultimate decision. In many calls to which a policeman responds, a charge under the criminal code could be laid; however, the policeman will often decide that the incident is a social misdemeanour that should not be resolved in the courts. Therefore, in order to understand the role of the police in dealing with "crime", it is essential to come to grips with the meaning of his discretionary power.

3. FACTORS THAT INFLUENCE POLICE DISCRETION

When called upon for help a policeman is obliged to decide whether to invoke the criminal process or deal with a complaint in some other way. In this he has the guidance of the relevant statutes and the policies of his Force, but these may be ambiguous and not indicate a clean cut decision one way or the other. Although the public is in general agreement as to how they expect the police to deal with serious crime such as rape, murder or robbery, they are confused or uncertain about how "soft" crime, such as assaults, neighbour disputes, or disorderly behaviour should de dealt with. The public assumes the police will "keep order" in the city but give little thought or direction to what that means. Therefore, it is important to examine the influences that come to bear on a policeman in his task of "keeping order". In the following pages various factors are identified as having a bearing on what decision is made when police are called in to act.

Factor 1: The Officer's Personality, Social Values and Attitude

(a) "I stopped a guy the other night in a big Lincoln and I don't know who the hell he thought he was . . . he either had to be a big time Forest Hill type or a hood . . . ."

(b) "Like I'm not prejudiced, but good Lord I wouldn't let my kid go around looking like that with greasy hair down to his shoulders and slopping around the street corners with nothin' to do".

(c) "You know I don't agree with these kids dropping out of school and wandering around all over the place with nothing to do, but it isn't against the law and yet we are always suspicious of them, like they are going to commit a crime and we'll nail them".

(d) Police officer to a black community worker: "Lately we have had a lot of trouble with 'your kind' holding up Kentucky Fried Chicken places . . .
Response from worker:
" 'Our kind' like chicken!!"

The most obvious factor determining a policeman's action is his own individual personality, social values and attitude. The majority of Toronto police personnel were brought up in and maintain the working class ethic and adhere to an acquired middle-class morality. As indicated in other parts of this paper, the individual officer may hold to middle class values much more strongly than do some minority groups with whom he comes in contact. In some cases this may mean a changing of the officer's values to meet community expectations; in other cases, there is no change.

A person joins a police force for many reasons; however, the attractions appear to be job security, including fringe benefits, a role of authority with high visibility and diversity of work. Many policemen say that police work brings status and high respect; they see themselves as a visible and valued helper of their fellow men. Many feel this is a position that they could not obtain in other work, without further education, years of effort and inside

connections to promotion. Yet many new recruits find that the "glamour" of police is myth and that the day-to-day workload is boring, frustrating and alienating.

The policeman's attitude to the organizational authority of the police force and his role as an authority figure determines the type of action he will take. Within the Metro Toronto force there is no military authoritarianism which provokes blind judgments or "robot-like" decisions based on strict regulations or policies for each and every act a policeman performs.

The men are encouraged to respond to their duties with individual responsibility framed within the administration's overall attitude on law enforcement. The majority of field personnel accept the directions of their superiors and perform the ordered tasks with a sense of respect, rather than fear or frustrated submission. As in any large organization, there is some cause to question the judgment of the superior officers, but due to the allowance for individual discretion by each man, the disrespect or criticism is voiced in "guardroom" discussions or "scuttlebutt" rather than reflected in actions on the street.

Another important factor in police attitudes is the extent to which the individual policeman is willing to use power and authority in a crisis situation.

> There is no way people are going to think I'm a great guy, when I'm arresting people on warrants, nailing them for speeding and stuff that they have done against the law . . . hell no one likes to be caught by the big bad officer . . . and a lot of guys like to feel they have the upper hand at an occurrence and come on like Mr. Big . . . not necessarily rough but with a lot of power . . . . I guess it is hard because the force makes you feel a lot of respect and I guess that we want to be respected and some guys figure the way to get respected is act important . . .

Some policemen will take on the role of a "big power figure" when it is pushed on them; others are able to assume that role more easily:

> . . . a rule enforcer is likely to believe that it is necessary for the people he deals with to respect him. If they do not, it will be very difficult to do his job; his feeling of security in his work will be lost. Therefore, a good deal of enforcement activity is devoted not to the actual enforcement of rules, but to coercing respect from the people he deals with. This means that one may be labelled as deviant not because he has actually broken the rule, but because he has shown disrespect to the enforcer of the rule.[5]

Factor 2: Personal Level of Tolerance

> When I moved into a division in a high income quiet neighbourhood after working downtown for years . . . I couldn't understand why people got so excited over the littlest things . . . Boy if they knew the stuff that was going on in some of those low income housing places they would die . . . And we are always getting asked how we feel when we see someone dead or a victim of a sexual assault . . . and you know I wonder if I'm not callous or something but it is just a job and you get used to some of those things . . . it makes you mad but you have to tolerate it, 'cause it's our job . . . ,

It is interesting to observe the change in attitude and level of tolerance of a policeman after continuous exposure to social disorder and deviance. He may become frustrated with the public apathy in the prevention of disorder, with the "buck-passing" of social agencies and with the courts' inability to deal effectively with the problems brought to them. In some cases his tolerance for disorder increases and he appears indifferent or philosophical about minor occurrences that might outrage some members of the general public. He finds that he belongs to the only "agency" that must work effectively 24 hours a day and must resolve problems without assistance.

The policeman may bear the brunt of harsh public criticism for his behaviour or decisions in certain cases. That part of the public which is part of the ruling consensus supports the police as long as they maintain the rules that matter to them. However, in Toronto there are many diverse immigrant groups, many communitities with "new" social values and political ideologies that are not shared by the ruling consensus. Thus, the policeman understands that among some groups in the community certain behaviour is looked on as acceptable even though the larger community, or other groups in the community might regard that behaviour as deviant. He is then caught between a pressure to enforce the norms and values of the larger community or to tolerate the accepted norms of a minority.

Factor 3: The Felt Pressures within the Force

> It doesn't take long before you find out what is expected of you, and as long as you do the job with pretty good judgment and the citizens don't complain it's okay. You get to know what piddly things have to be done and what are the things that the department expects . . . you can pretty well use your own judgment and experience to carry them out.

The attitude of the Metro Toronto Police to law enforcement and order maintenance affects the way in which individual officers use discretion. Unlike departments in the United States or several other major cities of Canada, the Toronto Force relies heavily on the individual officers' discretion and permits a certain degree of autonomy in district and division administration as well as flexibility in establishing community liaison. There is a minimal emphasis on promotion based on "the numbers game": an officer now is considered for promotion on merits other than how many tickets he writes, how many cases he "cleared" or how many court convictions he produces. Without doubt, there are still officers in the ranks who consider these the prime criteria for measuring police performance. It is a department free of graft and corruption: the "bribe" is a rarity which when found is treated harshly. Although maintaining a military structure and discipline, this force tends to avoid the "military robot" type of mentality. When an officer decides on a course of action in a situation, he responds to his training, past experience, the direction given in the past by his immediate supervisor, and the anticipated reaction of his "boss".

Within the force itself there are more specific controls to which every man responds. There are rules and regulations for conduct and procedures, there are defined policies for the behaviour used while maintaining public order. However, within the department, the strongest element of control are the "unwritten policies" and, as indicated later, criticism or negative sanctions from the "boss". It is often heard said within the ranks that certain inspectors or sergeants condone the use of force when necessary to gain information or control an offender. As indicated later in this report, there is no question that there are men within the force who feel that the use of force, verbal and physical, is the only way to gain control; however, generally, the men feel that the present administration is against this type of behaviour and are reticent to "thump" a suspect unless the suspect or offender provokes the officer. "Sock a (expletive deleted) today and you lose 5 days pay" is the classic quote.

The pressure within the police fraternity itself to stop the "hard line" approach is interesting to note. This may be influenced by the Community Officer Program, the new Beat Patrols and the publicly stated views of the police administration to present day policing. It is strange that often the officers in the ranks receive the "message" about police force attitudes, policies and behaviour from the media and the public, rather than directly from their own officials.

As in all militaristic-type organizations, the men receive interpretations of administrative intent in the form of orders. These orders are procedural and usually negative in delivery: "An officer shall not do such", or "The following is not considered to be appropriate police behaviour". This negative reinforcement will provide the control for certain actions of the officers, but does little to explain the intent or rationale behind the orders. An officer may come to understand this rationale through talking with his colleagues or through interacting with the community.

Negative reinforcement is the prime support for an officer. As stated he will receive orders within the department that state what he shall not do; he will hear about the "bad" performances he puts forth. Rarely does he receive positive information about his commendable actions, his actions of merit as assessed by the community or individuals.

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To counterbalance his negative support, the officer receives positive support within the police "fraternity". When one officer gets "into a scrape" either in the line of duty or outside his work, he will receive much assistance

and support from his own peer group. This is one criticism that the public will make of the police: they stick together and cannot understand that there are some "bad cops". The policeman on the street also feels that if there is an alternative between himself and the public in the line of duty, his superior officer will give him the benefit of the doubt in the incident. Nevertheless, he knows he can expect a rigorous inquiry should a member of the public complain about his conduct in a particular instance.

In the past 3 years there has been a rising show of public support for the Toronto force and this has suggested to individual officers that there is a responsibility to perform so as to fulfil these expectations. As the public have come into closer contact, through seminars, visits to the police divisions, and community-police sponsored projects the public have become slightly more aware of the complexity of police problems and attempted to support their force. As suspicion diminishes, dialogue takes place and expectations are more in line with performance.

Factor 4: Community Attitude toward Disorder or Conflict

> When we started having all those demonstrations around the American consulate . . . I can remember being really on edge that we would be in for one of those big riots like Chicago . . . they were the big thing and all the kids were right into the violence thing . . . we have never had one and we didn't know what to expect and I don't know why any of the cops didn't over-react. . . .
>
> After that incident on the Mall on Yonge Street this summer, we were hearing a lot of talk about the public push to close it and that the police had to keep better order . . . but they wanted it [the Mall] and at the first hint of trouble we feel the pinch for action . . .

Another factor influencing a policeman's discretion will be the community attitude to disorder at that time. If a community's tolerance for social disorganization is low, we witness the "cry for blood" syndrome. In 1969, the city of Toronto was shocked, appalled, frightened and screaming for police attention to the new "drug phenomena". "The dirty filthy kids, with their drugs" were the latest bit of social disorder to be controlled; the police bore the brunt of controlling it. The Toronto police were caught, as was every other institution, with a lack of knowledge and were pressured into using the Criminal Code to "get rid of" this dreadful disorder. To the credit of this force, senior officials realized that this wave of new deviance could not be controlled by the law alone and set about aligning themselves with other social agencies and indegenous youth groups to come to some mutual understanding and resolution of the crisis. Even today the constable confronting a possible drug offender is faced with the dilemma of a change in the social attitude to drug taking, his own personal attitude to the victimless criminal offence and the knowledge that his own police department has the understanding that this phenomenon cannot be contained by the criminal law.

In many cases a person in possession of "several joints of grass" will be spoken to and let go; even the courts are giving out light sentences (fines, absolute and conditional discharges) for "minor personal" possession. The public has dropped its cry for the blood of minor drug offenders, but is still pressing for the "blood" of the serious traffickers. One must ask the question, as a policeman did, "If in fact we are saying it's okay to smoke a little grass, how are the people supposed to get it if it is not brought in by someone?" These types of questions run through the minds of a policeman and he finds that he is caught in the position of carrying out what appears an ambiguous law.

At any time the policeman on the beat can tell you what behaviour is offending the public, the general mental health of the area and the types of disorder that cannot be tolerated. For instance, in an upper middle class area in North Toronto where there are also extensive highrise apartment buildings, there were a high percentage of calls for suicide attempts, noisy parties and mental illness problems. An officer who has spent many years in a high density low income area downtown states that there appear to be more lonely, isolated people with mental health problems in North Toronto than downtown where assaults, fights and domestic disturbances take place. Another officer thinks the reason for this is "if you live in a nice place you have to act nice and try and behave, but if you live in a grubby mess you might as well act like a grubby person!" Inevitably, the policeman in responding to a wide range of calls for help and his familiarity with the varying community resources available in different parts of the city encourages him to see himself developing an expertise in resolving conflict or trouble.

Because of this a policeman may see himself acting toward the public with an uncertain mixture of authority and social expertise. He will at one time speak and act with authority and power in resolving a crisis, at other times the community sees the policeman in his role as counsellor and mediator. At the same time, the policeman accepts the opinion, voiced and held by persons in the legal profession, that he really has no knowledge or expertise in matters of law. He states he feels inferior to the "academics" and uneducated before the lawyers and judiciary. In the past few years this attitude has slowly changed as the officers become more involved in community planning. Social agencies see the policeman as a relevant member of community planning, in fact, as another "specialist" to whom they will push their failures! Community groups now insist on the participation of the police. With this demand for police expertise, there is a change in attitude among policemen. Instead of taking a back seat in community problems and planning, the policeman now assumes the positive role of catalyst and instigator.

Development of this role as "fixer" is speeded up as the community becomes more diverse, more complex. Certain minorities or communities may develop life styles or habits of conduct that are unfamiliar to the average

policeman. His reaction to this difference in values, conduct, habits of dress or speech may not be nearly as tolerant as indicated earlier in the matter of minor drug offenders.

Differences in speech and behaviour of minor groups may give the policeman the sense that he sees deviant behaviour and he becomes more suspicious and alert to disorder or what he might consider to be disorder. Complaints are often heard by the leaders of minority groups, such as Italian, Black, Portuguese, or East Indian that the police have them under stronger surveillance and are quicker to "pounce" than they are in Anglo-Saxon "white" communities. These complaints may partially result from "minority paranoia" and fear of authority. However, there is a police tendency to step into a situation in one of the minority group communities with more authority and speed than in a community with which they identify.

> Listen, I don't know what those devils are going to do next when they are babbling away in a lingo that I don't understand; they are laughing and dancing around half plastered. (A policeman's remark made at an ethnic parade, 1973)

There is uncertainty on both sides and the policeman has the authority to use his power when he feels he, the community, or the public is threatened. The question to be asked is: how will he be able to assess this threat until he understands the culture or what is accepted behaviour of that particular group? In Toronto the Department is making an effort to acquaint the men with the many cultures in Toronto. However, this may be only in the form of negative reinforcement: "Don't hammer a guy because he's Black".

There is little official education or orientation to acquaint the policeman with the different types of people. Within some divisions seminars are sometimes set up by the Community Officers for groups of policemen to get together with community workers or leaders of the various ethnic groups. However, these meetings are not structured enough to accomplish any more than an airing of complaints, or the questioning of certain methods and behaviour.

Most policemen will tell you they treat everyone the same and that they have no discrimination against people with whom they come in contact. A few minutes later, or in the same breath, some will say "spooks are always giving us a hassle and raise the crime rate with their antics in the subways and their Black Power talk" or "the Italians are always drinking too much and fighting with their spouse or neighbours and raising the devil in the streets and we always have to bust them for making their booze". There appears in fact to be no carry over between this verbal discrimination and the way police deal with people. Indeed, police talk as referred to in various parts of this paper is of an informal locker room type that seems to boost the policeman's image of himself as a tough cop rather than serve as a basis for prejudice on the job.

As the ethnic population in Toronto grows, it is apparent that the policeman's assessment of community attitude toward disorder will have to be made in terms of local communities with a greater understanding and awareness of the various cultures. This will mean the exercise of discretion to apply the rules or not according to an understanding of what the local community expects in relation to minor disorders.

Due to the average policeman's working or lower middle-class background and his constant exposure to deviance, disorder and crime, his response to some crimes is more outraged and indignant than the general public's. He may also feel that the rise in crime is due to the lack of family life and parental authority, society's expression of permissiveness and the education system's inability to keep up with the times.

In other types of minor offences not involving a high moral content a policeman may often wonder whether he should invoke the criminal process. He is often presented with a situation which could be considered as a breach of a statute and he must consider the outcome with relation to his job (will "the boss" give him trouble?), the reaction of the parties concerned (will they report his actions if they are not satisfied, what is in their best interest), and the strength of the case in court. If in doubt, a policeman's perception of what is considered as crime is heavily conditioned by the general police policy that "we are here to carry out the law, not change it".

If officers have the opportunity to discuss their job and their perception of public morals and values, it becomes evident that they generally have a comprehensive appraisal of their communities' attitudes. They express the opinion that only a percentage of the public are now law-abiding and that the majority of police work is taken up with people's use of the police as family or neighbour dispute mediators, dispensers of information and providers of service. The general apprehension of the police in Toronto is that the public look to the police, more and more, to settle even minor disorders or to provide a social worker function. They believe this will raise confusion as to the role of law enforcement; as a result police officers see a specific need for alternatives to the police in the handling of many social or health oriented problems reported to them.

Factor 5: Crime Prevalent in the Community

> You always have the steady number of bank holdups, B and Es, and theft and stuff like that, but then there will be a rash of something different like shootings or woundings of domestics, or speed freaks going crazy with a gun . . . and that sure puts a policeman on his guard . . . especially if it gets blown up in the papers . . . you concentrate special effort on watching out for those things and your suspicion gets higher. . . .

Specific criminal trends in the city at the time will greatly influence the judgment and investigate attention of the police. In conjunction with

the rise of a certain type of crime is the media reporting of the crime generally. A recent example in Toronto was the purse snatchings in the subways concurrent with groups of Black youths congregating on platforms. The press reported these occurrences fairly regularly. As the word began to spread in an exaggerated form, the police stepped up surveillance and patrolling in the subways. Although the purse snatching, assaults and thefts resulting from the subway "gangs" were negligible, a special unit was drawn up, consisting of 7 or 8 men whose role was that of enforcement and deterrence. The Black youths soon became aware of the surveillance and arrests resulting from this special unit and moved their activities elsewhere. At the time that these subway "crimes" were receiving public attention, investigation of Black youths by officers in the down-town areas increased. Awareness of increased police suspicion heightened resentment among Black youth, and as a result, mutual hostility increased. More Black youths were stopped for investigation, Black community groups were viewed with greater suspicion and the Community Officers made greater efforts to communicate and become involved with all Black groups.

During this time (January, 1972 to April, 1973) the media was carrying articles and programs on the various Black groups in Toronto, and within the Black community itself a greater self-consciousness showed itself in open hostility and arrogance towards the police. Some leaders in the Black community initiated community meetings with the police officials on some of the problems.

The police, generally, and the public, do not possess a racial prejudice that is based on hate or intolerance with an intent to suppress, but rather on ignorance and a belief in the historical mythology of the Black culture: "People with incredible sexual drive, uninhibited life styles, low mentality, violent, lazy, unreliable". Such are the opinions voiced by some police to describe the Black person. Is it any wonder that in this frame of preconditioned thought the discretion of an officer would be affected? These prejudices are equally shown, in a different manner, by policemen to other minority groups:

> "I can't understand why the bloody East Indian has to run around town in a turban. Why can't he accept the Canadian way of dress?"
> "Why can't immigrants learn to speak English after they have been here 3 or 4 years?"

The police attitude to sexual morality, other than "deviant" sex acts or immorality, is in keeping with public tolerance. In a time of commercialized sex, public display of nudity and love-making and a partial acceptance of homosexuality, the police have maintained a tolerant attitude.

As already indicated, trends in crime and the public or media attention to these trends will affect a police officer's exercise of his discretion in particular cases. If the public issue of the moment is drunkenness, the police

support the public's attitude and great emphasis is placed on the arrest, detention or medical assistance of drunks. A sudden increase in suicides in the subway provokes deeper awareness by officers of the mentally ill person. On a national scale, crimes against the state, the Laporte murder, the *War Measures Act,* or national political group agitation will raise police suspicion of "radical" groups or "suspicious" political figures. Despite what the press may report, however, the officer on the street is well aware of the difference between the actual crime picture and the public or political exaggeration of certain "crimes".

Factor 6: Training—Relationship to Role and Behaviour

> The need to disregard complexity is structurally built into the occupation. Policemen are required to deal with matters involving subtle human conflicts and profound legal and moral questions, without being allowed to give the subtleties and profundities anywhere near the consideration they deserve.[6]

The difficult and demanding nature of police work was referred to by another writer in these terms:

> Reviewing the tasks we expect of our law enforcement officers, it is my impression that their complexity is perhaps greater than that of any other profession. On the one hand we expect our law enforcement officer to possess the nurturing, caretaking, sympathetic empathizing gentle characteristics of physician, nurse, teacher and social worker as he deals with school traffic, acute illness, and injury, juvenile delinquency, suicidal threats and gestures, and missing persons. On the other hand we expect him to command respect, demonstrate courage, control hostile impulses and meet great physical hazards. . . . He is to control crowds, prevent riots, apprehend criminals, and chase after speeding vehicles. I can think of no other profession which demands such seemingly opposite characteristics.[7]

How does a department such as the Toronto Police Department train a man for such a demanding job? Most of the recruit training is "hardware" oriented and prepares a man to work mechanically. This leaves him with little or no foundation for understanding his community, his role as an arbiter of social values, and the imperfections of the criminal justice system.

The new police recruit receives a fundamental understanding of the statutes that he is to uphold, the procedures to be followed in their application and some understanding of his role in the community. However, most of his "education" takes place in the field. He receives this from his immediate supervisors, his observations and contact with the community and his peers in the police fraternity.

> There is no way that police college can teach a guy everything that he is going to have to know . . . but they should give a better picture of the types of things we run into like, the domestics, the handling of crazies, what are some of the characteristics of the various ethnic groups etc. You can't really get training in common sense but maybe it would help to have some interpretation practice of common sense balanced with the statutes and procedures we have to follow. . . .

Within the police training college itself there is presently an evident lack in the education of officers to human problems and societal ills. There are, however, a great number of men now taking university courses, either sponsored by the department or on their own initiative. Still, the motivation for the attendance at the courses varies. For some it is enough that "it looks good on my record if I try and go to extra school". A man having taken the courses is more likely to receive attention for promotion.

Basically, the new recruit learns on the job and picks up a great deal of information and "know-how" from his fellow officers. He will learn the attitude prevalent in the department and the opinions and behaviour of experienced men. He will come to his own standard of behaviour, using the experience of trial and error.

For many, the job becomes a habit, the same pattern of behaviour is followed throughout the job, without questioning the meaning of the consequences of the action that is taken: "Keep in good with the boss and no complaints from the public". A policeman may not have many opportunities to engage in a learning situation in the community or even in his own department. Recently the Metro Toronto force has undertaken a Community Officer program, which has shown its effect in the spread of greater community awareness within the ranks. As more men of ethnic and minority groups are included in the force there is an informal education of the men and an apparent change in attitude. As already indicated, some officers now attend outside university courses in the social sciences, psychology, business and corrections.

Throughout a man's police career he will return to the police college for in-service classes. At these classes senior officials discuss policies of policing and administrative attitudes become evident to the men. It is here that the men in the ranks hear directly from the senior officers and have the opportunity for open discussion and questioning of policy and procedures. All these forms of formal and informal education affect the way in which a policeman ultimately uses his discretion on the job.

Factor 7: Attitude toward the Criminal Justice System

> We feel like grade 10 drop-outs with pea-sized brains . . . while those big wig lawyers fly around in their halloween robes and play their funny games . . . some of them make us look like perfect asses in court and then they get the same light sentence and he serves it in a joint that puts him to work on a garbage truck or something equally as useful and they call that rehabilitation . . . mind you if you get the right case in front of the judge that you know is going to be hard on the guy then it is okay because he goes up for a stiff sentence.... It's too bad the judges and those lawyers don't stick with us on the street for a while and see how far their funny language and fancy robes last....

One of the factors that weighs heavily in the way in which a policeman exercises discretion is his attitude towards the criminal justice system. In

particular, his attitude to the courts in Toronto is often a determining factor in deciding the resolution to a dispute. The police generally view the court system with negative hopelessness as they see it attempt to resolve minor crimes or social misdemeanors. When questioned about a substitute or alternative to the present magistrates or provincial court, the police state that too much garbage such as family disputes, interpersonal assaults, petty or minor crime is getting into the courts and the lawyers use this to get their fee. When it is pointed out to them that in fact it is the officer that is putting the "garbage" into the courts they ask "what else are we going to do with it?".

It is not that the policeman feels that the court system is a total loss, but he feels that the "games" played by the lawyers within the system obstruct the end of justice. Policemen complain about defence lawyers and plea bargaining. When an offender is charged, the police will lay as many charges as possible as they know the charges will be bargained by crown and defense. In many instances this practice is requested by the Crown Attorney.[8]

Within the court system the policeman, as the initiator of the criminal process, becomes accustomed to becoming enmeshed in plea bargaining, and becomes an agent of the "cop a plea racket". A young offender, who had been under continual harassment from the police of a down-town division, came, with four others, to court for the 5th time in less than two months. He was brought in on 8 charges, ranging from violation of the Narcotics Control Act to Criminal Code offences (B & E and assault). On the morning of his appearance one officer "made a deal" with the offender, stating that if he would plead guilty to theft, B & E, and possession, the other charges would be dropped and he would see that the charges against the four co-accused would also be dismissed. The young offender pleaded guilty without counsel present and was remanded for sentencing. The co-accused were dismissed but within days all were brought into custody on other charges. When the young offender discovered that they were in custody he requested his lawyer to change the plea. Following a 6-months' delay with the offender incarcerated, the ultimate resolution of the case was another hearing, trial and sentence in county court. The young offender was finally sentenced to 15 months in a correctional institution. The police were furious that the offender got "a light sentence" in view of his record and their knowledge of his crime involvement; the offender was completely negative to the entire process and felt he had "been messed up" by the whole performance; the defence attorney was pleased that he had been able to "get a satisfactory sentence"; and the crown attorney, who had not been apprised to all the facts, was indignant to learn after disposition of the case, that there had been an agreement in the first instance between the policeman and the offender.

While some policemen are disgusted by plea bargaining and the "deal making" that takes place between crown attorneys and defence lawyers, others accept it as part of the system and conduct their arrest, charge and

investigation accordingly. They feel the court system has become such an intricate "game" of win at all costs that they must play their part in the game to survive. They openly feel the lawyers are in "the business" for the money and drag a case out as long as possible for the greatest fee possible. The police have learned to initiate their own "bargaining games" prior to the court, and within the court they continue to make deals with accused.

Some policemen abuse the court fee they receive for an appearance. This can be done in many ways but the most common is to persuade an accused to plead "not guilty" on his first appearance so that the officer's court fee is assured by his compulsory appearance at the trial.

> Look those damn legal aid lawyers suck more out of stupid cases that don't need a lawyer and they drag the bloody case out so they all get that dough . . . and I don't think that a cop purposely will go out of his way to get a court fee . . . but you know the lawyer is going to do it anyway so we get it anyway . . .

In court the investigative unit of the police that presents cases is conditioned and hardened to the court system; this is reflected in the manner of questioning, arrest and investigation of a suspect. They feel that the red tape, "win or lose games" and antics of the legal profession make the police officer the scapegoat and the "fall guy", the victim of the system. Most officers believe that the innocent are not protected and the offender "gets away with having all the attention paid to him while the victim loses everything. The lawyers make a bundle while the cop is under fire because lawyers think they lie!"

Such court experiences reinforce a policeman's negativism and hostility to other professionals in the justice system. This frustration is relayed to the suspect in the first instance. It is standard comment in police circles that "probation officers don't know what is going on and are not doing the job, and lawyers are up in the clouds and enveloped in their own world.

Even judges are sometimes seen as sentencing or dismissing cases on an irrational basis. After the apprehension of an elusive criminal following a thorough investigation, the court may deliver a light or suspended sentence under circumstances that mystify the investigating officer:

> Sometimes we wonder what the thinking by the judges is, when they hand out the sentences. It is obvious that they really have no idea of all the things that an offender has been up to and the cops begin to get the feeling that the lawyers and the judges think that we lay out a charge without too much reason. If they thought that we knew a lot about the offender and might have been working on the investigation of all his activities for some time, maybe they would realize that we feel the guy really needs some form of help or detention. But the legal profession (in the courtroom) figure we are just doing our job and arresting everything that moves . . .

A general opinion of the correctional system held by the police is that for the most part it does not fulfil the purpose they think it should. The

offender who serves a sentence in an institution should learn from experience and "come out rehabilitated". Several constables have suggested that a correctional system, similar to the system in Russia should be instituted here. There, they say, the offender is removed from society and put through vocational or aptitude testing to determine his abilities. He is then put to work in an apprenticeship type of work situation where he is making or building something useful to the country. Policemen feel that Canadian inmates sit around in an institution figuring out the "best way to beat the system the next time around" and come out of a correctional institution worse than when they went in. The negative attitude that police hold for the criminal justice system provokes the attitude that if any meaningful justice takes place, it has to take place on the street and prior to the court system.

The values held by the other "actors of the court drama" also have a subtle effect on the discretion or performance of the police. A dramatic example of this was a conversation overheard outside a court room. A crown attorney was talking to a defense counsel, in the presence of several plain clothes detectives, about a preliminary hearing for a rape case. The crown stated to the defence, "your black client will not do too bad on this because he raped a black girl . . . he should only get about 9-15 months!" The detectives later agreed with the statement that the black man would get a lesser sentence for raping a black girl than he would have, if the victim was white.

Sentencing has a strong effect on the policeman's discretion to invoke the criminal process. As stated earlier, the sentences will be seen by the police as a directive to them and their role in the community. The court's apparent high tolerance of prostitution, drunkenness and minor theft indicates to the officer that this is the acceptable public attitude and he assumes the same tolerance within the course of his daily work.

Factor 8: The Crime and its Situation

> At the time of confrontation or arrest you just play the thing by ear . . . depends on your mood, the suspect's attitude and actions, what the offence is . . . there are so many things that play a part in the arrest . . . or non-arrest . . . hell if a guy is just about to go off shift he may decide, if it is a minor thing, to let it go, instead of going through all the paper work . . . like it's all unconscious as to how you go with a thing . . . but after the fact if you think of all the things that made you proceed the way you did, you name a thousand things . . .

At the occurrence of a specific incident, the decision to invoke the criminal process and or lay possible charges will be affected by several immediate factors—the attitude of the suspect; the relationship of the suspected offence to the crime tolerance within that specific area or community; the amount of available evidence pertaining to the offence; the "social problems"

related to the suspect, such as mental illness, drunkenness, or known recidivism; the officer's personal attitude to the specific offence committed; and the risk-fear factor.

The most obvious element influencing the judgement of an officer will be his own attitude or frame of mind at the time of confrontation with a suspect. We have noted the broader and more general influences which affect discretionary power; however, at the exact time of an occurrence, the personal and professional factors affecting that officer's mental attitude may be the greatest factor in deciding the course of action that he takes. Combined with this will be the automatic, instinctive response based on training, experience and intuition gained on the job.

Although these influences on a policemen's use of discretion are not considered definitive by any means, it exemplifies the undefined influences on the use, and enforcement of the law. Without careful consideration given to the factors influencing discretionary use of power by the police, it seems ludicrous to assume that the law that is drafted in the legislative chambers will "look the same on the Street".

Factor 9: Press and Media

> The press can make or break a police force . . . right now we are in the media's good books . . . but it may not last. . . .

As already suggested in discussing factor 5, above, one of the greatest influences on how a policeman exercises discretion to lay charges or to deal with the case in other ways is the likely reporting by the media. It is in this image-making process that the distortion or misunderstanding of issues is produced that affects the behaviour and discretion of the police. The effect of the media is even greater than the "internal grapevine" of the "police fraternity". Only a policeman will know how distorted and misquoted a story will become in the press. The media can "make or break" a police force and can influence public opinion favourably or create a backlash against a department. However, to the individual officer it is this arena of the written and visual reporting of "the world today" that shapes his understanding of the public he serves.

4. INNOVATIVE RESPONSE AND SPECIAL PROGRAMS

From the above account it becomes clear that decision-making by the police constable becomes increasingly complex in a rapidly growing multicultural metropolis such as Toronto. Not only does much of the police workload involve social-type cases but it becomes increasingly difficult in the context of different cultures and groups to know whether a particular incident should be dealt with by the formal criminal process or whether the problem should be screened out, diverted, or dealt with by way of settlement or

mediation. In part, the solution will depend not only upon the training and capacity of the officer, but on community expectations and the resources within the community to assist in handling the problem.

Inevitably, however, in responding day in and day out to people in trouble and faced with the failure of many community resources to give adequate help, the policeman sees himself as the general "fixer" in the community. In a sense he sees himself more as a general practitioner than a psychiatrist, more a social worker than a doctor, yet part sociologist. He knows the community and its resources from past experience; he knows types of offenders and what some of them need by way of control or treatment if certain types of disorder are to be reduced. In all of this the policeman resorts to prosecution in the courts, especially in minor offences, almost as a last resort when no other satisfactory solution can be found. As indicated earlier, when the courts deal with the case as a legal problem, not as a social problem requiring a solution, the police tend to get frustrated with the legal "games".

In recent years, the Toronto police force has responded to the challenge facing it by various innovative measures including formation of the Crime Prevention Unit, the Beat Patrol, the Youth Bureau, and the Community Service Officers. All ofthese are attempts to develop a better knowledge of the various groups or communities in Toronto, to have available a pool of expertise to deal with social conflict without engaging the full criminal process, and generally, to strengthen the liaison and understanding between the community and the police. A short summary of the work of these different units follows as they illustrate innovative use of authority and discretion in keeping the peace or managing conflict in a growing city.

Some of the Crime Prevention Unit men are in the community advising individuals and corporations about the best methods and factors for safety of persons and property. Several other similar units have been set up to accomplish deterrence and prevention of crime and social conflict. As already indicated, at the outset of the thefts, disturbances and assaults by black youths in the subways a small unit of men, both black and white, were assigned to plain clothes duty to work in subways and trains. These policemen became acquainted with the suspects or offenders, were present at all the known trouble spots and broke up loitering groups that hung out in the underground stations. It soon was known that the police were "everywhere". Disturbances became infrequent and gangs moved their activities above ground to shoplifting and purse snatching. These activities were more visible and easier to deal with and the police were back to the old game of cops and robbers instead of gang threats underground.

In an attempt to develop a closer relationship with specific communities, the Beat Patrol Unit was established in 1971. The Patrol was a return to the old foot patrol. A special unit of handpicked men were placed on "the

Strip", on Yonge Street and also in the Yorkville area. These districts were congested with youthful pedestrian traffic and were the cause of much concern and complaints by store owners and the public. The success of the patrols was evident from the outset of the program. The youth themselves approached the uniformed men to seek information and discuss problems; the shop-owners were reassured by the visible presence of policemen in their area. The Beat Patrol has recently expanded to another division, in a high density area. The men on the patrols are either of similar ethnic background or are familiar with the cultures in the areas they patrol. There has been recognition that informal and close contact with these men on the street patrol had done much to dissipate distrust among the younger ethnic generations, while the older generation are comforted by the easy accessibility of the police. It is obvious from all reports that these foot patrols act as a visible source of security, assistance and friendliness.

> A Greek shopkeeper: "We never liked a policeman here . . . it meant trouble . . . but now we got the nice man come here all the time as he passes by the store and even the dog don't bark at him . . . Some kids even follow and talk to with . . . nice to have him go by . . ."

The benefit to the police is not only in terms of public relations, but through the Beat Patrol the department is able to gather unhostile and informal information regarding the communities that the men patrol. The foot patrol officers get to know many individuals and have gained the support of many ethnic groups that previously were unapproachable on a formal basis.

The unit of the Metropolitan Police Force that is the oldest and most recognized for crime prevention is the Youth Bureau. This unit is concerned with juveniles who come in contact with the police, and through the use of discretion attempts to refer and divert juveniles from the formal criminal justice system. Youth Bureau officers are primarily concerned with prevention rather than prosecution and often intervene in a total family crisis to refer the problem to a social agency; as a last resort the case may be brought before the Juvenile and Family Court where a court order may be the only way to get an agency to accept a difficult referral.

The frustrating lack of cooperation and communication between police and community agencies is most evident in the study of the activities of the Youth Bureau. In the past, Youth Bureau officers often got little action on referrals to agencies unless the referral was backed up by a Juvenile and Family Court sanction. Therefore, attempts by the Youth Bureau to accomplish informal crime prevention were thwarted by unsatisfactory delivery of social services to juveniles. It is not unusual for social workers to attempt to "dump" a problem onto the Youth Bureau in order to push the problem under the authority of the criminal justice system. An analysis of the follow-up of cases handled by the Youth Bureau can be found in the Youth Bureau Study of the East York Project.

Another new program reflects the concern of the Toronto police to meet the need for community-based police service. The Community Service Officer Unit was started in 1969. Although it had no written policy initially, nor a clearly defined role, the intent of the administration for this program was well known. It was essential, at a time when the force was highly mechanized and had become dissociated from the community, that the policemen "get back to the people" and to the service network that served the public. The program was initiated at a time when drug crisis problems were mounting. These non-uniformed men were relieved of the formal law-enforcement duties and assumed a variety of roles—trouble shooters, street researchers of social problems, public relations personnel, social service-based referral workers and interpreters or teachers to their own "fraternity"—all under the publicly assumed role of a policeman.

> Some people think we are the latest Mod Squad, others think we may be social workers, others figure we are public relation guys . . . At times we are not sure who the hell we are . . . but a guy soon figures it out and he never loses the idea that he is a cop. . . .

Although these men do not see their role today as specifically crime prevention, there is no other unit more actively performing this task than these men. They are called upon for crisis follow-up, they maintain close contact with many potential youthful offenders, they conduct many seminars in the public schools, they have the confidence of many "unreachable" groups in the community and are seen as "a big brother" to many troubled families. The CSO's role of prevention is seen at its height in the prevention of victimless crime and in the field of mental health. These men have gained considerable experience in the handling of mentally disordered people, have knowledge of the psychiatric resources in Toronto particularly with respect to satisfactory service delivery, and have gained the respect and cooperation of the medical personnel in this field. However, due to their expertise, there is a tendency for the psychiatric and social work professionals to use the Community Service Officers as a convenient way to unload difficult cases. Until a year ago, the police were being requested to drive mental patients from one institution to another, to remove a disordered person from the premises of an institution and to undertake the referral and follow up of a patient from an institution to a social agency. By undertaking this role, the police were in fact allowing institutions and agencies to "duck their responsibilities" and remain staunchly immersed in their institutional policies.

Due to police and community support for the CSO unit, the Community Service Officers are able to use wide discretion in the interpretation of the Mental Health Act and accomplish swift and positive results upon intervention. They maintain their role as police officers, but reduce the high visibility of their authority through plain clothes and sympathetic and non-threatening attitudes.

Although the uniformed men have viewed the CSO program with skepticism, there is now a closer relationship between the two. Detectives still cannot understand why the CSO's are not using their "undercover" position to supply pertinent information for the arrest of an offender. The problem is particularly prominent in a situation where the CSO may be acting as an arbitrator or mediator in a dispute and while involved with a person or group in this role, becomes aware of the possibility of invoking the criminal process. At such times the Community Service Officer must weigh the usefulness of "informal" solutions against the solutions provided by the formal court process.

Domestic disputes have long been the frustrating social problem that police recognize as having a potential for violence and crime; at the same time the police know that the courts in these cases are not equipped to offer satisfactory solutions. The Metro force has undertaken an experiment in one division in an attempt to divert family disputes from the criminal justice system through referral to a community agency for resolution. When a uniformed officer is called to a family dispute he responds to the crisis demands of the situation. However, he makes note of information pertaining to the situation and passes this on to the Community Service Officer as soon as possible. The CSO calls back to speak to the participants in the dispute. He spends as much time as needed to satisfactorily refer the participants to a co-operating family agency which will continue to work with the problem. The results of this project have shown the need to initiate this procedure in other divisions. "If they are able to talk over some of the problems with a social worker who can help them maybe we can prevent another occurrence".

When the public becomes aware of the CSO program, they ask why the entire force cannot be made up of men such as these. This is an impractical demand, for it is essential to have a balance between this type of officer and the calculating, hard driving investigative men in Morality, Intelligence, or Homicide. Why? As one police officer stated: "Whether the public knows it or not there are still organized crime and violent criminals in the city and it is essential to have the right type of men dealing with the various elements in our society".

Behaviour of a CSO when promoted, transferred back to the uniformed ranks, and placed in charge of other men is different to that of the man who has not been in the unit and has not had the opportunity for indepth exposure to community problems. Although there have been only a handful of promotions since the unit's inception it is interesting to note that the new CSO-type sergeant encourages his men to be more aware of the community they work in. His technique in arresting will be authoritative but humane, his tolerance for the station paperwork is high; the new sergeant tends to

approach situations with a sense of humorous manipulation, rather than hard-line rhetoric. He tends to have an open, assured and interested manner in dealing with public complaints instead of the bored matter-of-factness that can be found in a sergeant who has been on the job longer or in uniform during his whole career. The CSO as a sergeant seems to take an interest in making his constables aware of the variety of ways of using discretion and the available resources. It must be stated, however, that Community Service Officers do not lose their ability to react in strict law enforcement or investigation of criminal offences. As with all police officers, they uphold and rely on the legal statutes and militaristic structure to keep order and protect the public. It is only in the method or use of their discretion that they differ from their uniformed counterparts.

5. CONCLUSION

The meaning and content of the preceding report can be viewed as nothing more than a glimpse of the police, individually and collectively, in their task of undertaking to use authority under the criminal law to achieve a measure of social justice. It shows that most of the demands made on police are for social services rather than prosecutions or arrests. Even where the reported incident might be dealt with as a crime, police use discretion to deal with minor cases in other ways. This use of authority and discretion, and the innovative responses by the police in meeting demands for social services provide useful insights for criminal law reform.

Do the criminal laws, the social agencies and other institutions meet the needs of the public? Is it possible that many citizens feel that certain laws are in substantial conflict with their own social or cultural values? Do we witness the police being placed in the position of upholding unpopular but "established" values simply because such values have survived for generations in the statutes and the Criminal Code? If in fact many of the rules are not in accord with the public's needs, can the police offer any assistance in deciding how to overcome this possible discord?

To propose changes in the law without due consideration of the social problem as seen by police, nor an understanding of how they exercise their discretion in applying existing law, but simply to concentrate on due process values or civil liberties can have chaotic results which may negate the theoretical basis of the desired legislation. For example, when the vagrancy statutes were removed from the Code was there any consideration of police use of those statutes? In the preparation of the recent Law Reform Commission paper on Statements and Admissibility, was any police evidence drawn on for the basis of the paper? While we lament the imprisonment of alcoholics what emphasis has the community given to providing the police with an alternative to prosecution in these cases? If we continue to expect

that the police will deal with minor crimes as social problems to be screened out of the criminal justice system what help can the police be given in developing criteria for identifying conflicts that could best be dealt with by a diversion scheme? What views do police have on how to set up a diversion scheme so that it remains visible and accountable?

In the opening paragraph of this conclusion, reference was made to possible discord between public needs and institutional rules. This discord as indicated earlier in this report, may show up when the Criminal Code is used to suppress behaviour that is symbolic of certain value systems. For example, minority or ethnic groups exhibit behaviour which may often be misunderstood as "criminal" or deviant; hippies and their life styles and values are often suspected of "criminal" behaviour; groups involved in political dissent, such as student activist groups, civil liberties groups, or the Black Coalition are regarded as potentially criminal. The police often experience these groups negatively and their testimony bears evidence of "symbolic crime". In particular, is it possible that certain laws or statutes, including the old vagrancy laws or the present Immigration laws, for example, are applied unequally in conjunction with the criminal law as one way of responding to deviant behaviour among minority groups?

As mentioned earlier, the police are only too aware of areas in which the delivery of services by community agencies is inadequate. The police can specifically list the areas of need as they have experienced them themselves. Specifically the lack of 24-hour availability; unreal expectations by the institutions with respect to what the public needs or should need; lack of co-operation between institutions; use of criminal justice system in order to force treatment or resolve a difficult case; and, related to all of the above, the inflexibility and narrow specialization of institutional personnel.

In so far as corrections are concerned, the police experience may also be of benefit to law reformers. The pre-sentence report suffers from many ills, among which is the lack of specific police testimony, such as personal assessment of the arresting officer and information on the attitude of accused at the time of arrest, or while in custody. Often, a police officer, and, particularly in Toronto, a Community Service Officer, will have information on home environment, or social problems which at present may not be included in the pre-sentence report. Police testimony, in an informal sentencing hearing, would also be of help in some cases to correctional personnel. Psychiatrists particularly may find this helpful in developing a treatment program. It would be helpful, upon sentencing to an institution if an offender's total story could accompany him to the institution for use by the correctional service. If the policeman was aware that his assessment or conclusions might be meaningful to the correctional service, he might be encouraged to present his assessment of the offender's needs.

At another level, the police sometimes feel that in attempts to reform the criminal law it is largely the loud-talking minority, radicals, or elitist lawyers that get heard. The general public is not heard. Police feel that they, more so than most groups, have a pretty good feel for what the public expects of the criminal law, yet, too often they see the police either brushed aside or cut off from policy information and law reform. As already indicated, this feeds police alienation and, in so far as the law may not correspond with police needs and expectations, encourages police to find ways of getting around the letter of the law.

Perhaps this report on some aspects of police authority and discretion will help people concerned with reform of the criminal law. Unless there is an understanding of how police decision-making operates at the meeting of law and people in trouble, criminal justice, and particularly reform of the criminal justice system, will fail to meet the needs of ordinary citizens.

NOTES

[1]American Friends Service Committee, A Struggle for Justice, A Report on Crime and Punishment in America, 1971, p. 12.

[2]Chief Constable J. F. Gregory, City of Victoria, The Police and the Administration of Criminal Justice (Nat'l Seminar on the Administration of Criminal Justice).

[3]As of July 1, 1973, this police department had a force of 5,156 persons representing 1,030 civilians and 4,126 uniformed personnel. It was responsible for an area of approximately 241 square miles and a population of 2¼ million people. The department was organized into three sections: administrative, field and staff operations and one executive officer. A detailed breakdown of the force, numbers of personnel, division of the city in police districts, statistics on 1972 criminal code offences, related growth statistics, radio calls for service, and juvenile offences and crime can be found in appendix 1. The city that this department 'serves and protects' is a rapidly growing and culturally diverse urban centre. An extremely detailed research paper entitled Dial-A-Cop by Clifford Shearing, Centre of Criminology, University of Toronto can provide in depth information on the calls to this department and the mobilization of the police to these calls. To date this report has not been published.

[4]This classification of calls is taken from James Q. Wilson, Varieties of Police Behaviour, Harvard University Press, p. 18.

[5]Howard S. Becker, Outsiders. Studies in the Sociology of Deviance, Freepress, 1973, p. 158.

[6]Egon Bittner, Functions of the Police in Modern Society.

[7]Dr. Ruth Levy, Director, Peace Officers Research Project, Health Department, City of San Jose, California. Speech presented at Conference for Police Professors, Michigan State University, April, 1966.

[8]In a recent case, a 19-year-old youth was charged with "Theft over $200, theft under $200, possession over, and possession under". The charges were laid after apprehension at the scene of a Break and Enter of a radio shop. One has to ask the question: if the offender stole goods over $200, then surely they include an amount *under* $200? However, in this case when the case came to court he was in fact convicted of theft over and possession under!

The Use of Diversionary Dispositions for Juvenile Offenders

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Based on the
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INTRODUCTION

One facet of the work of the Law Reform Commission concerns investigation of 'diversionary' modes of disposition for offenders. By this is meant removal of the offender from more formalized hierarchical 'processing' within the Criminal Justice System. The East York Criminal Law Project was one such medium through which the use of diversionary disposition was explored.

However, existing components of the Criminal Justice System may employ techniques which may be viewed in the context of diversion. One such component is the police use of diversion with juvenile offenders.

As part of the East York project, a study of a sample of juvenile cases from the Metropolitan Toronto Police Youth Bureau was undertaken. The study, incorporating a variety of objectives, provides a rich and unique source of information. This paper will summarize a first computer analysis of police use of diversionary dispositions with juvenile offenders.

Organization of the Youth Bureau Study

The case sample for the study was drawn from four police divisions within Metro Toronto, an attempt being made to assemble four distinct socio-economic groupings:

Area 1: 33 Division: new, suburban, 'middle class'
Area 2: 51 Division: Ontario Housing, 'lower class'
Area 3: 53 Division: established 'middle class'
Area 4: 55 Division: no Ontario Housing, 'mixed class'

Statistics Canada census information was geo-coded for each area (presentation of this data will be made in a subsequent report).

From a departmental listing of all juveniles from the four divisions having any contact with police during a six-month period (July 1 to December 31, 1970), some one hundred offenders from each area were drawn randomly for inclusion in the study.

An information file was then assembled for each juvenile, including complete documentation of the following:

police contacts
juvenile court appearances
probation record

training school record
social agency record
adult police contacts
adult arrest record

The file was thus pre-dated and post-dated from the six-month time period, permitting longitudinal study of cases.

Some 25 juveniles from each area were selected (non-randomly) for a more intensive follow-up study involving interviews with family and compilation of socio-economic data. A final component of the study was a follow-up with agencies involved with the juveniles.

Work-Up of the Data Set

The data were computer-coded and currently reside on a secured tape file. The data set has been organized as a series of files (classes of information, e.g. 'police contacts') permitting analysis with a statistical package of computer programs (SPSS). A great variety of computational procedures may be performed upon the data, including marginal totals, simple statistics, correlation, and more advanced applications such as regression and factor analysis.[1]

FINDINGS

Summary Characteristics of the Case Sample

A preliminary report was prepared[2] which indicated, in some detail, the characteristics of the data set. In summary, this analysis showed the majority of the 381 offenders in the sample to be male, Caucasian, Protestant, born in Toronto in the mid-1950's and living with both parents. Parents tended to be long-term residents of Toronto, born in Canada, and did not show a history of transient address changes. Larger family sizes were observed in the Ontario Housing areas. The juveniles first had contact with police at an average age of 12 to 13 years, with an average value of 6 police contacts. A range of from 1 to 56 police contacts was indicated, with 22% of the case sample having only a single police contact (and no further involvement). Forty-eight juveniles were associated with a delinquent group known to police.

The nature of offences involved in police contacts ranged from more serious Criminal Code violations (assault, robbery, breaking and entering) to quasi-criminal or non-criminal behaviour (curfew violations, truancy). Criminal Code offences (including vagrancy offences) comprised some 58% of all police contacts.

Half of the cases had at least one appearance in Juvenile Court. A range of from one to twenty court appearances was shown. Typically, these involved Criminal Code offences such as possession of stolen property, break and enter of apartments, or shop-lifting (theft under $50.00).

One-quarter of the case sample had received a probation, and a smaller number (10%) were referred to Training School.

The Police Contact

Diversion of juvenile offenders occurs through the medium of the police contact. A 'contact card' is prepared and placed on file in the Youth Bureau of the Metro Toronto Police for every 'valid' juvenile contact made by an officer. This file is essentially a record of all dispositions given to juveniles by police officers. The nature of behaviour encompassed in the 'contact file' ranges from Criminal Code offences, other statutory violations (Food and Drugs Act, Narcotic Control Act, and Provincial statutes such as Liquor Control), and non-specific deviant behaviour such as:

unreasonable curfew hour
disorderly conduct
trespassing, loitering
truancy
suspicion of having committeed an offence.

The expressed policy of the Bureau is to restrict the contact file to 'valid' contacts, and where possible, to eliminate questionable occurrences from a juvenile's file. It should be noted that contact cards may be produced for 'suspicion of having committed an offence' or 'routine check' instances (this category comprises 9.6% of all police contacts for the present study). The Bureau has ordinarily no means of verifying the validity of juvenile contacts filed by police constables, with the exception of instances specifically referred to the Bureau.

Officers frequently make reference to a juvenile's Youth Bureau contact file in a decision (within the officer's discretion) whether to formally charge a juvenile. The officer may also decide to refer the juvenile to the Youth Bureau for handling.

The juvenile's parents are normally informed of the filing of a police contact in the Youth Bureau. On a finding of delinquency in Juvenile Court, a juvenile's prior police contacts may be entered before the court, as a factor bearing upon disposition of the offender.

Thus, the police contact file is of some significance in the Juvenile Criminal Justice System.

Characteristics of Police Contacts for the Case Sample

A total of 2,535 police contacts were observed over the 381 cases in the data set. Dates of the contacts ranged from 1955 to 1973, with most contacts occurring in 1970 (during the 6-month sampling period). A detailed breakdown of the type of offence/behaviour involved in the case sample appears in Table I.

TABLE I

TYPE OF OFFENCE/BEHAVIOUR FOR ALL POLICE CONTACTS
(*ungrouped*)
(N=2,535)

Offence/behaviour	N	Per cent of Total
Theft from dwelling	43	1.7
Theft from auto	53	2.1
Theft of auto (incl. joyriding)	50	2.0
Theft of bicycle	51	2.0
Shoplift/theft from store	204	8.0
Theft from newspaper box	11	0.4
Theft from school	16	0.6
Theft from apartment locker, garage, shed	7	0.3
Theft (other)	88	3.5
Attempted theft	29	1.1
B & E school	20	0.8
B & E store	16	0.6
B & E apartments/dwellings	85	3.4
B & E church	1	0.0
B & E apartment lockers, garages	2	0.1
B & E other	45	1.8
Attempted B & E	9	0.4
Fraud/forgery	0	0.0
Fraud/uttering	0	0.0
Fraud/slugs	1	0.0
Fraud/false pretenses	4	0.2
Fraud/credit card	3	0.1
Attempted fraud	1	0.0
Possession of stolen property	93	3.7
Possession of stolen car	20	0.8
Possession of burglars tools	11	0.4
Robbery/purse snatch	19	0.7
Robbery—assault and rob	13	0.5
Robbery—armed	2	0.1
Robbery—extortion	3	0.1
Wilful damage (private property)	69	2.7
Wilful damage (school)	13	0.5
Wilful damage (church)	0	0.0
Wilful damage (TTC, CNR)	4	0.2
Wilful damage (parks)	4	0.2
Wilful damage (other)	27	1.1
Assault bodily harm	14	0.6
Common assault	41	1.6
Assault—wounding	1	0.0
Assault—threatening	4	0.2
Weapons—point and discharge	6	0.2
Weapons—possession, carrying concealed	6	0.2

TABLE I (*Concluded*)

Offence/behaviour	N	Per cent of Total
Trespass (private property)	88	3.5
Trespass (R.R.)	20	0.8
Trespass (construction site)	3	0.2
Trespass (general)	28	1.1
Criminal Code sex offence	9	0.4
Other C.C. offence a/g property	17	0.7
Other C.C. offence a/g person	2	0.1
Other C.C. offence	28	1.1
Narcotic Control Act		
Possession of marijuana	12	0.5
Possession of hashish	2	0.1
Possession of other drug	0	0.0
Food and Drugs Act		
Possession of methamphetamines	0	0.0
Possession of hallucinogens	1	0.0
Possession of other controlled drug	0	0.0
Glue sniffing	130	5.1
Liquor Control Act		
B.L.C.A. have in possession	7	0.3
B.L.C.A. minor consume liquor	49	1.9
B.L.C.A. drunkenness	1	0.0
B.L.C.A. unlawfully in licensed premises	2	0.1
Highway Traffic Act		
Hitch-hiking	15	0.6
Drive under age 16	14	0.6
Mini-bike offence	9	0.4
Car driving offence	3	0.1
Other offence	16	0.6
T.T.C. by-law	4	0.2
Tobacco Restraint Act	27	1.1
Vagrancy "A"		
Runaway from home	121	4.8
Runaway from agency placement, gp. hm.	26	1.0
Runaway from training school, T.S. placement or gp. home	22	0.9
Cause disturbance/disorderly	186	7.3
Loitering	48	1.9
Promiscuity	2	0.1
Homosexuality	3	0.1
Other sexual	3	0.1
Unmanageability	14	0.6
Curfew	209	8.2
Truant	66	2.6
Contact or routine check (non-specific)	244	9.6
Breach of terms of probation	10	0.4
Re-hearing (referred to court by agency, etc.)	0	0.0
Not coded/error, etc.	6	0.3

The largest single value noted in this table appears for the category "contact or routine check—non-specific" (244 contacts), which incorporates 'suspicion' contact cards. The largest Criminal Code category observed is found for the offence of "shoplifting/theft from store" (204 contacts).

In attempting to reduce the numbers of categories involved for presentation, offences were re-coded and organized along a descending scale of severity[3] (as per Criminal Code category). This analysis appears in Table II.

TABLE II

TYPE OF OFFENCE/BEHAVIOUR OVER WHOLE FILE OF POLICE CONTACTS

(Grouped Offences)

(N=2,535)

Offence/behaviour	N	Percentage*
Assault, wounding	71	2.8
Robberies	37	1.5
Breaking and entering	169	6.7
Theft/possession of stolen property, frauds	708	27.9
Weapons	12	0.5
Other Criminal Code	28	1.1
Wilful damage, trespassing	258	10.2
Provincial statutes, F.D.A., N.C.A.	292	11.5
Runaway, truancy (Vag. "A")	692	27.3
Sexual immorality	8	0.3
Routine check/non-specific	254	10.0
Not coded	6	0.2

*Percentage values will not reflect true proportions, as the re-coded offence classes do not have equal numbers of discrete offence codes.

TABLE III

TYPE OF OFFENCE/BEHAVIOUR FOR WHOLE FILE OF POLICE CONTACTS

(Grouped Offences)

(N=2,535)

Offence/behaviour	N	Percentage
Criminal Code Offence	1,283	50.6
Other Statutory Violation	162	6.4
Non-Specific Deviance*	1,084	42.8

*This classification includes "Vagrancy 'A'" offences such as runaway juveniles; these have been excluded from 'criminal code' classification for purposes of diversion analysis (see Table VI).

With classification approximating Criminal Code categories, then, Theft and Fraud offences comprise the largest proportions of police contact offences.

A further reduction of categories of offence/behaviour into Criminal Code offences, other statutory violations, and non-specific deviant behaviour classifications appears in Table III (this classification is of relevance to analysis of diversionary dispositions, see Table VI).

Analysis of other features of police contacts indicates that a police constable made first personal contact with the juvenile (as opposed to other police units) in 72% of all contacts. For the remainder of the file, the Youth Bureau, through one of its officers, made first contact. Victims or witnesses notified police of the juvenile's activity in 16% of all the contacts. For contacts involving more serious Criminal Code violations (Assault, Robbery, Breaking and Entering, Thefts, and Offensive Weapons), victims or witnesses gave information resulting in a contact in 27% of the (sub) total. For 39% of the contacts, information obtained through police sources initiated the contact (most of these would be the officer's personally observing the juvenile, or through a 'routine check' of a juvenile). In one-third of all contacts, the juvenile was interviewed on the street, while a further one-third involved an interview at a police station (this total corresponds to the total police constable initiation of the contact).

Interviews for contacts involving more serious Criminal Code violations were conducted at a police station for half of (these) contacts.

In Table IV a cross-tabulation of initiation of contact by type of offence/behaviour is shown. The police constable is generally responsible for initiation of 71.6% of all police contacts with juveniles, with Youth Bureau officers initiating most of the remaining contacts. The Bureau tends to initiate a somewhat higher proportion of contacts involving Criminal Code offences (a more detailed analysis indicated this finding to result from a

TABLE IV

INITIATION OF CONTACT BY TYPE OF OFFENCE/BEHAVIOUR

(Column % Values Given)

Initiator	Criminal Code Offence	Other Statutory Violation	Non-specific Deviant Behaviour
Police Constable	64.5	85.8	78.0
Detective	2.9	1.9	0.5
Youth Bureau Officer	31.3	12.3	21.0
Community Service Off.	0.5	0.0	0.0
(Not coded)	0.8	0.0	0.5
Totals	100.0	100.0	100.0

singularly high proportion of assault and wounding offences involving Youth Bureau initiation of the contact).

A presentation of dispositions employed over the total file of contact is shown in Table V.

The 'caution' disposition most frequently employed in the study sample is an informal procedure in which the officer speaks with the juvenile, informs him of the nature and potential consequences of his deviant behaviour or releases the juvenile (frequently to parents).

This disposition may be combined with other informal measures such as restitution of property. Information on these aspects was not included in the present data case. A sample of ten cases from recent Youth Bureau files provided examples of this device. The offences of mischief, wilful damage, and theft were involved, with parents agreeing to make restitution to victims in the majority of cases. An incident in which restitution is to be made by the juveniles is summarized in the following excerpt:

> WILFUL DAMAGE: April 27, 1974
>
> Cautioned: Five juveniles
>
> On Thursday, the five boys were caught leaving the underground garage after a number of light bulbs had been smashed. [The superintendent of the building] obtained their names and reported the incident to police. The parents of all the boys were called today and brought their sons in. All admitted breaking some of the lights. Restitution will be made by each of the boys. Total damage is $38.00.

An example of restitution in a theft incident is provided in the following summary:

> THEFT UNDER $200.
>
> The youth went to the Variety Store at [address omitted] and took a carton of cigarettes and left without paying for them. He was stopped by the fearless clerk and turned over the P.C. (name and number omitted). From investigation, it was determined that the youth had been in the store earlier and stole another carton of cigarettes. Total value of stolen goods: $11.00. Restitution to be made. Cautioned and released to parents.

TABLE V

POLICE DISPOSITION OF CONTACT

(Percentage Breakdown over Total File of Contacts)

Police disposition	N	Percentage
Caution	1,134	44.7
Referral to agency	19	0.7
Investigation only	547	21.6
Other disposition	8	0.3
Court disposition (Charge)	815	32.1
(Not coded/error)	12	0.6
Totals	2,535	100.0

Another wilful damage incident involved three juveniles (each under 10 years) damaging a vacant house under renovation. Parents of the three contacted the complainant and are negotiating the terms of restitution. The amount of damage involved is estimated at $500.00.

In these situations involving theft or property damage, the police act as informal mediators through whom terms of settlement between the parties may be generated. The need for formal criminal processing is thus reduced through such techniques.

The category 'investigation only' is most often used with respect to 'routine check' or 'Suspicion of having committed an offence' contacts. For these instances, the officer may determine that insufficient evidence exists for charging the juvenile, or cautioning him for specific deviant behaviour. The juvenile is thus released after investigation by police.

When police dispositions are examined over different categories of offences, a more detailed picture is produced as shown in Table VI.

This analysis indicates a decreased use of such diversionary dispositions as caution or investigation only with Criminal Code offences (with a corresponding increase in proportion of court referrals). Non-specific deviance is generally handled through use of the caution or investigation only procedure.

Four offence categories comprise the largest proportion of Criminal Code offences referred to court: shoplift—theft from store, break-and-enter of apartments, theft (general category) and car theft/joyriding (respectively). An examination of proportional rates of court referrals indicates that car theft/joyriding and break-and-enter (apartments) each have, respectively an over-80% rate of court referral, while the offences of shoplifting and theft (generally) have much lower court referral rates in the sample (30% and 50% respectively).

TABLE VI

POLICE DISPOSITION OF CONTACT BY CATEGORY OF OFFENCE/BEHAVIOUR

(Row Percentage Values Given)

Type of Offence/Behaviour	Caution	Referral to Agency	Investigation Only	Other Disp.	Court (Charge)	Not Coded	Total
Criminal Code Offence (N = 1,283)	39.8	0.5	11.8	0.4	47.4	0.2	100.0
Other Statutory Violation (N = 162)	51.2	0.0	9.9	0.0	38.3	0.6	100.0
Non-Specific Deviance (N = 1,084)	49.7	1.2	34.9	0.3	13.2	0.7	100.0

An examination of non-specific deviance contacts referred to court shows that runaway juveniles, processed through a charge of Vagrancy "A" were the most frequent court referrals for the group. The category 'runaway from home had a proportional court-referral rate of 38%, somewhat higher than the mean rate of court referrals over the whole file (32%). Interestingly, 'glue sniffing' behaviour showed a court referral rate of 35%.[4]

(A more detailed examination of the type of offence/behaviour *cautioned* will be found in Table VII).

Diversion in the Context of the Youth Bureau Data

Considering the earlier definition of 'diversion' (viz.: removal of the offender from more formalized hierarchical processing in the Criminal Justice System), an operational definition of the process must be made in the context of the study data.

For purposes of this analysis, all non-court juvenile dispositions made by police officers may be considered 'diversionary'; however, further refinement of this classification is necessary. As described in earlier sections of this paper, a wide variety of juvenile 'deviant' behaviour falls within police purview—from the more serious Criminal Code violations, to less serious regulatory statutory violations, to mere 'misbehaviour'. To credit police authorities with diversion of the latter category of behaviour from more formal Criminal Justice processing would distort a responsible analysis of 'diversion'; a juvenile cannot be charged for 'suspicion' or for 'routine checks' by police. Analysis of 'diversion' must be made from categories of offences for which a charging/court referral disposition is a viable alternative open to the discretion of the police officer.

This reasoning has led to the exclusion of 'vagrancy' offences from Criminal Code categorization in the present analysis (with inclusion in the 'non-specific deviant behaviour' group). After discussion with officers and Youth Bureau personnel, the author has learned that various operational factors during the time period of the study led to the laying of "Vagrancy A" charges for such behaviour as:

— runaway from home
— runaway from agency placement or gp. home
— runaway from training school, T.S. placement
— causing a disturbance
— loitering

These factors included, among others, efforts by social agencies to have vagrancy charges processed as a means of retaining a "chronic runaway", and as a means of managing 'uncontrollable' juveniles. Further, the availability and efficacy of treatment facilities for juveniles was made more certain through the device of a 'court order'.

Thus, operational factors have introduced underlying variables into an officer's discretionary decision to charge a juvenile with vagrancy; a proper analysis of diversion cannot credit police with diversion of these offences, when, ordinarily, a court disposition would not be an appropriate method of handling this 'deviant' behaviour.

Analysis of diversion, then, will be restricted to contacts involving breaches of the Criminal Code (excluding Vagrancy, sic.) and violations of other statutes providing the following offences:

Narcotic Control Act

- possession of marijuana
- possession of hashish
- possession of other (proscribed) drug

Food and Drugs Act

- possession of methamphetamines
- possession of hallucinogens
- possession of other controlled drugs

Liquor Control Act (Ont.)

- B.L.C.A. have liquor in possession (minor)
- B.L.C.A. consume liquor (minor)
- B.L.C.A. drunkenness (minor)
- B.L.C.A. unlawfully in licensed premises (minor)

Highway Traffic Act (Ont.)

- Hitch-hiking
- Driving under age 16
- Mini-bike offence
- Driving offences
- Other H.T.A. violation
- Toronto Transit Commission By-Law violation
- Tobacco Restraint Act violation

The Data: All Diversionary Dispositions

A police 'diversionary disposition' has been operationally defined as:

- cautioning
- referral to agency
- investigation only
- other disposition

Analysis of the nature of offences for this group of dispositions shows Criminal Code offences comprising 39.3% and other Statutory Violations 5.8% for a sum of 45.1% of all diversionary dispositions (771 contacts).

A cross-tabulation of the two categories of offences by diversionary dispositions appears in Table VII.

Detailed study indicates the more frequent Criminal Code violations receiving 'investigation only' disposition are theft, trespassing (private property) and 'trespassing' (other). No particular concentration of 'investigation only' dispositions could be found among other statutory offences.[5] (A more comprehensive study of the cautioning disposition is presented, *infra*).

Further information on all 'diverted' contacts indicates that the police constable is most often responsible for initiation of the contact (as contrasted to other police units). The juvenile was interviewed on the street in 48% of these contacts, with 16% receiving an interview at a police station (a somewhat smaller proportion, 13.1%, were interviewed at home).

The Data: Caution Disposition

A separate analysis of the police caution disposition was undertaken in view of its relatively large proportional use in the study data (caution dispositions were given in 1,134 or 44.7% of the total file; they form over 66% of all diversionary dispositions).

Some 39.8% of all contacts involving Criminal Code violations and 51.2% of all those involving other statutory violations received caution dispositions. Subsequent analysis showed the offences of shoplifting/theft from store, trespassing (private property), theft (general), and wilful damage (private property), respectively, to comprise a majority of Criminal Code violations receiving a caution disposition. Examination of proportional 'rates of cautioning' showed the offences of wilful damage (private property) and trespassing (private property) to have a cautioning rate of about 70% each over the sample. A similar analysis of shoplifting/theft from stores showed that six of every ten of these offences received a 'caution' while theft (general) showed a much lower caution rate of 2.8%. Interestingly, 23

TABLE VII

TYPE OF OFFENCE BY DIVERSIONARY DISPOSITION

(*Row Percentage Value Given*)

Type of Offence/Behaviour	Caution	Referral to Agency	Investigation Only	Other Disp.	Total Percent Diverted
Criminal Code Offence (N = 1,283)	39.8	0.5	11.8	0.4	52.5
Other Statutory Offence (N = 162)	51.2	0.0	9.9	0.0	61.1

of 41 common assault charges were cautioned by police. Of the 'other statutory violation' category, breaches of the Liquor Control Act, in particular "consumption of liquor while a minor", comprised the largest proportion of 'caution' dispositions. This particular offence showed a rate of cautioning of 40%.

Other characteristics of police contacts receiving caution dispositions were similar to those already described for 'investigation only' dispositions.

Employment of Cautioning

Further examination of the cautioning procedure was undertaken in order to determine whether police use of this disposition increased or decreased with repeated contacts on individual juveniles. When cross-tabulation analysis was performed, the 'caution' disposition was found to be employed in some 69% of initial contacts; this may be contrasted to a mean value of 45% over all police contacts. However, with increases in police contacts, a reduction in the use of cautioning was observed. By the fifth police contact, caution dispositions accounted for only 24% of the total; interestingly, a corresponding increase in the use of court (charging) dispositions was found. For the fifth police contact, a proportional value of 58% 'court' disposition was observed. With further increases in the number of contacts, the same trend of decreasing cautions and increasing employment of court referrals was indicated.

The observed pattern may perhaps be explained by a tendency among the 'repeater' juveniles to become involved in Criminal Code violations, for which the 'court' disposition is a more likely technique.

Juveniles With Adult Police Records

Of the 381 juveniles in the current study, 52 had adult arrest records. These may perhaps be viewed as the 'failures' of the study—individuals for whom juvenile justice techniques of rehabilitation or individual deterrence had not reduced deviant behaviour. Speculation arose as to the role of juvenile contact dispositions in the genesis of such deviance patterning. Analysis was thus performed on aspects of juvenile contacts for 24 cases having adult arrest records.

A preliminary feature of interest is the much larger number of juvenile contacts shown for this group: an average of 12.5 police contacts was observed, as compared to an average value of 6 for the entire file. The group thus exhibits a much stronger pattern of observed juvenile deviant behaviour.

Another feature of the 'recidivist' file was a tendency to be involved with Criminal Code violations, as opposed to other statutory violation or mere non-specific deviant behaviour. A large proportion of Criminal Code violations was shown, especially in the initial few police contacts (the proportional value was about 60% for the initial five contacts). However, as the

number of police contacts increased, the proportion of non-specific deviance (including 'routine check' instances) was also seen to increase: a 'labelling' phenomenon may occur with repeated police contacts, through which the juvenile, 'known to police', is investigated for a variety of occurrences.

Some attempt was made to evaluate the effect of a court (charging) disposition upon subsequent use of cautioning with these juveniles. Analysis over the 24 cases indicated a slightly higher use of court dispositions after an initial court appearance; however, several of the juveniles studied had a large proportion of 'cautioning' after an initial court disposition (although many of these involved non-specific deviance for which the juvenile would not be expected to receive a court disposition).

It should be noted that many of the contacts for the 'recidivist' juveniles originated some years before the time period of the study: the influence of system factors such as the existence or experience of divisional Youth Bureau officers, employment of Criminal Code 'Vagrancy' charges, and social agency influence may have contributed significantly to the pattern of dispositions among these juvenile contacts.

Analysis by Area of City

As indicated previously, the sample for the study was drawn from four Metro Toronto Police divisions, representing to some extent, distinct socio-economic groupings. As a component of analysis of diversionary dispositions, sub-analysis by area was attempted.

The respective areas for drawing of the sample were (again):

Area 1 — 33 division — new, suburban 'middle class'
Area 2 — 51 division — Ontario Housing 'lower class'
Area 3 — 53 division — established 'middle class'
Area 4 — 55 division — no Ontario Housing, 'mixed class'

A presentation of the type of juvenile behaviour for police contacts in each area appears in Table IX.

TABLE IX

TYPE OF OFFENCE/BEHAVIOUR BY AREA OF CITY

(Column Percentage Values Given for Offence Categories)

	Area 1	Area 2	Area 3	Area 4
Number of Contacts	222	499	171	391
Average No. of Contacts per Offender	3.3	9.2	4.0	7.0
Criminal Code Offence	57.2	51.5	42.8	50.2
Other Statutory Violation	13.9	2.5	9.5	5.9
Non-Specific Deviant Behaviour	28.6	45.7	47.3	43.9

Of particular interest is Area 2 (51 division) which shows the largest number of contacts per offender, and a large proportion of 'non-specific deviant behaviour'.

A more detailed analysis of each offence category was performed in order to determine the dominant pattern of juvenile deviance within each area. Criminal Code offences showed the same pattern as observed in the general file (the offences of shoplifting, theft [general], break-and-enter of apartments, possession of stolen property, and wilful damage and trespassing [private property] were relatively constant throughout each area and formed the major proportion). However, a marked increase in the number of break-and-enter of apartment offences was noted for area one (33 Division—new, suburban middle class); this offence comprised 16% of all Criminal Code offences for the area (contrasted to an average of 4% for the other areas). One may speculate on the reasons for the difference: a greater number of apartment premises, differences in reporting, or differences in police enforcement methods may be significant.

Examination of non-specific deviance indicates differing patterns for each city area. The largest proportional categories for each area of the city were as follows:

Area 1 (new, suburban middle class):	Causing a Disturbance
Area 2 (O.H.C., lower class) :	Glue Sniffing
Area 3 (established middle class) :	Routine Checks
Area 4 (mixed class) :	Curfew Violation

The largest proportional discrepancies were found with "glue sniffing" (two-thirds of this behaviour occurred in the 'lower class' area) and "routine checks" (these formed 46% of all non-specific deviance for the established middle-class area, more than twice the average proportional value for other areas).

An analysis of the use of cautioning dispositions by area showed no marked differences from average values for the whole file. However, a somewhat lower proportion of Criminal Code offences in area two ('lower class') received a caution. This may be due to the different characterization of offences within the area (a larger number of more serious charges, such as breaking-and-entering was noted).

An attempt was made to examine the 'rate of cautioning' employed by area of the city. The 'rate' variable (number of cautions over number of contacts times 100) was calculated for all cases in each of the four areas. Analysis was then performed to determine the rate of cautioning as the number of police contacts increased for each area. While the expected trend was found (i.e., the use of cautioning decreased when numbers of contacts increased in all areas), discrepancies were noted which may reflect combinations of underlying factors. Area one ('new, suburban middle-class') tended

to show a relatively lower rate of cautioning, even for small numbers of contacts; this may be due to the character of offence in the area, or enforcement factors. Area two ('lower class') had a relatively higher rate of cautioning, likely due to the increased proportion of non-specific deviance contacts within the area. The remaining two areas showed the more conventional pattern of decrease as in the whole file.[6]

Summary

The Youth Bureau data set provides a useful body of material for the study of police use of diversionary dispositions.

The study has documented extensive use of diversion, even amongst Criminal Code violations, at the most primary processing level of the juvenile justice system. While over one-half of all 'diversionary' dispositions occur with forms of non-specific deviance such as truancy and curfew violations, some 53% of all Criminal Code offences and 61% of other statutory violations are dealt with in this manner. Longitudinal study of the cases has indicated that diversionary dispositions, and in particular the police caution, have been employed for some period of time in the police handling of juveniles. The addition of techniques such as restitution in offences against property provides a 'dispute settlement' role for police; citizens involved in this process, whether parents of offenders or complainants, may develop a more participatory view of the juvenile justice system, in which the parties themselves assume responsibility for remedies. Passive reliance upon institutional recourse may thus be reduced.

The Youth Bureau data shows the juvenile offender to be involved in relatively minor offences such as petty thefts and property damage incidents. Longitudinal study of such information may prove useful in development of diversionary model for minor adult offences. While preliminary analysis indicates juvenile court dispositions to have some role in the genesis of recidivist behaviour, more longitudinal study will be needed to assess the complementary role of diversionary dispositions in preventing deviant juveniles from developing adult crime patterns.

The data set may be seen as a rough 'surface characterization' of police methods with juveniles; to be sure, 'enforcement' factors play a major role in both police perception and disposition of juvenile deviance. The processing of Vagrancy 'A' charges during the time period of the sample study shows the importance of a phenomenological approach to the analysis and interpretation of 'juvenile crime' data.

NOTES

[1] The author is currently re-organizing the data into an additional file which will be structured by *offender* (i.e., will contain all information types organized under each case). This format will permit a more elaborate cross-referencing of the data than with the present (separate-file) structure.

[2] "Preliminary Report on First Computer Analysis of the Youth Bureau Data" November 26, 1973.

[3] For non-Criminal Code offences, the author employed an intuitive ranking of categories.

[4] For the time period of contacts in the study, some juvenile court judges were prepared to hear 'charges' of glue sniffing. A recent ruling by Beaulieu, J. indicated that such behaviour does not form a change upon which a finding of delinquency may be based.

[5] The overwhelming proportion of 'investigation only' dispositions are used with 'routine check' or 'suspicion of having committed an offence' contacts which have been excluded from diversion analysis.

[6] As noted previously, this analysis did not control for the type of offence/behaviour involved in the contacts.

Discretionary Clearances:

Observations on Police Screening Strategies

Prepared by
Calvin Becker

I INTRODUCTION

This paper represents an attempt at an examination of police responses to criminal events, in terms of the contrast between the relative proportions of occurrences which result in charges and prosecution and those which are discharged or vented by the exercise of some form of police discretion.

When the East York Project was initially designed, it was anticipated that the structure would provide for a complete monitoring of all police activity within the patrol district of 5411. That is, the project was staffed at the outset on a 24-hour basis with a view to facilitating the reporting by individual police officers within the patrol district at the end of their respective 8-hour shifts. As a further control, arrangements were made at the divisional level to ensure that police activity which resulted in the production of occurrence reports from 5411 would be delivered to the project headquarters as a check on the self-reporting by the individual police officers within the patrol division.[1]

Over the course of approximately three and one-half months, this voluntary self-reporting system evolved to a point where the police officers patrolling 5411 would drop into the project headquarters at 570 Main Street every two or three days and leave copies of the accumulated occurrence reports with the project staff. This development in the reporting of occurrences unfortunately had the effect of limiting the extent to which it is possible to say that the complete range of police operations was monitored within the patrol district over the one-year period. That is, it was apparent that when the officers discontinued their verbal reports at the end of their shifts, the project lost the benefit of reports with respect to a good deal of police activity which did not, for one reason or another, reach the point of being translated into occurrence reports at the divisional level.

By way of elaboration, it might be mentioned that during the first three and one-half months of project intake, from May 15 to August 31, 1972, a total of 362 occurrence reports were written up at project headquarters, representing a complete inventory of police interventions for that period of time. The project files thus provided an accurate record of police responses to claims on their resources, not only in their law enforcement and order maintenance capacities, but also in what might be termed their "social service capacity".[2] Within this latter category would be recorded such matters as reports of missing persons, sudden deaths, mental health problems, etc.—

matters which, strictly speaking, did not call for a law enforcement or order maintenance response. During that same period, only 228 general occurrence reports were written up at the divisional level. There were thus 134 matters in which the police were involved where their intervention was not recorded, or, in any event, in which the description of the intervention did not reach the stage of being translated from the police officer's notebook into a divisional occurrence report. The category of interventions which tended not to be written up in general occurrence form was, as might be expected, that involving claims on the police in their social service capacity. In the result, the consequence of the change in police reporting practices (from reports by individual police officers at the end of their respective 8-hour shift of duty in the project area, to delivery every two or three days of divisional general occurrence reports) was that the project could monitor police interventions only in their law enforcement or order maintenance roles. Only by limiting the scope of the inquiry was it possible to be assured of access to a consistent and complete set of information, for police record-keeping outside these categories could not be considered reliable unless obtained directly from the individual police officer assigned to the particular patrol area, and then only if obtained immediately after completion of his shift.

A further qualification on the range of police activity examined for the purpose of this study was that it was limited to matters involving offences against the *Criminal Code*, the *Narcotic Control Act*, the *Food and Drugs Act*, and the *Juvenile Delinquents Act*. Excluded from the scope of the study were police interventions involving such quasi-criminal provincial statutes as the Highway Traffic Act and the Liquor Control Act. The inquiry, in other words, was focused exclusively on police interventions of a criminal nature. In the result, there were some 789 such interventions over the one-year period in which the project was in operation.

II CRIMINAL OCCURRENCES AND CLEARANCE RATES

Confining ourselves, then, to the 789 criminal occurrences, we find that 315 or 39.9% were categorized for police purposes as "cleared", a term which roughly translates as the proportion of crimes known to the police which they believe have been solved.[3] The assignment of a given occurrence to a specific cleared category often appeared to be determined rather arbitrarily, particularly in view of the fact that precisely defined categories have been established for Statistics Canada's Uniform Crime Reporting System—a system developed by Statistics Canada in 1962 with the cooperation of the Canadian Association of Chiefs of Police. The clearance designations observed during the course of this study, and specifically those within the "cleared otherwise" category, in fact bore only a passing resemblance to those permitted by Statistics Canada.

Appendix 1 of *Crime Statistics*[4] provides a summary of Uniform Crime Reporting System rules and definitions, in which these instructions appear:

> In certain situations, the police may not be able to clear the offence by charge. If all the following questions can be answered 'yes', then the offence can be 'cleared otherwise':
>
> (a) Has the offender been identified?
>
> (b) Is there enough evidence to support the laying of an information?
>
> (c) Is there a reason outside the police control that prevents the laying of an information and the prosecution of the offender?

Most of the illustrations which elaborate upon the rule refer to such situations as the death or commitment for mental health reasons of offenders, complainants and witnesses, diplomatic immunity, non-extraditability, etc. Where the illustrations provide, however, for the "cleared otherwise" designation to be applied to such situations as the complainant refusing to prosecute, the offender serving a sentence on other charges or already facing a multiplicity of other charges—situations in which proceeding with the charges would serve no useful purpose—the categories begin to resemble those observed during the study. Thus, although it is doubtful that the police have available any device with which to unscramble the "cleared otherwise" categories for the purpose of complying with the standards set by the Uniform Crime Reporting System, there was nevertheless a sufficient measure of internal consistency to permit the following description of the various "cleared otherwise" categories:

(1) *Cleared unfounded*: This category included matters reported to the police as criminal events which were investigated and recorded as such, although the police themselves were apparently certain that no offence in fact occurred. For Statistics Canada purposes, this category is defined as meaning "that the investigation established the crime did not happen, was not attempted or there was no crime".[5] Although the Statistics Canada methodology advises that "unfounded occurrences" are to be subtracted from those "reported or known to the police" to arrive at the "actual number of offences",[6] project personnel were not able to discover any mechanism which would result in the exclusion of such occurrences from the Metropolitan Toronto clearance rates. Moreover, informal conversations with police personnel responsible for compilation of their records indicated a certain reluctance to exclude such occurrences, not so much because their clearance rates were thereby amplified, but because their experience had shown that matters originally described as "unfounded" might subsequently be reclassified if there should be a patterned recurrence of the event, as, for example, in situations of bad cheques: the first or second such event might qualify as unfounded, but a further repetition of the event might demonstrate a pattern which permits the attribution of a fraudulent intent.

In any event, the consequence appears to be that non-events may be included both in the area's criminal statistics and in the police clearance rates.

Examples of events which might find their way into this category would be a situation in which a repairman effected entry in the owner's absence to complete agreed-upon repairs, with the owner then seeking police verification that no one else had entered the premises; poorly secured door to premises found open and reported to police as a breaking and entering; suspected arson, etc.

(2) *Offender unknown, but property recovered; offender known only to complainant:* This category generally comprised instances of theft in which the property was recovered. Although no offender had been identified, the matter was marked "cleared" and placed in the concluded files upon recovery of the stolen property. Examples of such occurrences would be theft of auto (the largest single item), theft of bicycles, etc. Note, however, that it also included one common assault and one wilful damage. Also in this category were thefts from and by family members, among friends and associates, and by employees. Once the complainant realized that the offender must necessarily have been a relation, friend, or employee the request for further investigation was withdrawn.

(3) *Offender known to police:* In this category were

(a) events in which the offender was known to police but no charges were laid, the file generally indicating "insufficient evidence". The range of offence types included threatening, indecent exposure, break and enter, assault, theft over and under, etc. In two cases it appeared that the complainant was not satisfied with police efforts to discourage the matter being pressed further, and the complainants in these instances presented themselves before a justice of the peace where they were again advised that the proposed prosecution lacked a sufficient evidentiary base;

(b) incidents in which the police chose, as a matter of the exercise of their discretion, not to encourage the laying of charges. There was, for example, a shoplifting incident which was not prosecuted because the police elected not to jeopardize the offender's probation (on similar charges); a child-beating by a father in a common-law relationship, it appearing that the father was depressed because he was out of work and the matter being capable of referral to an appropriate social agency;

(c) instances in which the offender was known to the complainant, or in which they became acquainted during the course of the investigation, and the complainant decided to terminate the prosecution. Such cases included a rape, thefts among associates and family members, a breaking and entering by an alcoholic which the complainant declined to prosecute on being made aware of the offender's circumstances, etc.

(4) *P/W on charges outside 5411: Adult:* Occurrences originating within the patrol district of 5411 were designated "cleared" on the arrest of an offender on other charges outside the patrol district, although the potential

charges relating to the 5411 occurrence were not formally included among those recorded against the offender. Although the reasons for non-inclusion in these instances are varied, they would presumably include the police apprehension that the charges would be redundant, etc.

(5) *P/W on charges outside 5411: Juvenile:* As with the similar category relating to adults, when it was possible to identify a specific juvenile with a 5411 occurrence and that juvenile was facing charges from another area of the city, the occurrence was marked "cleared" without an attempt by the police to have the charges recorded formally against the juvenile. Again, the reasons were often that the police believed such charges to be redundant, or, as it was sometimes expressed on the cleared occurrence reports, "would serve no purpose".

(6) *Juvenile caution administered:* The police records indicated here that their intervention extended only to administering a caution on apprehension of the juveniles believed responsible for the occurrence. The juveniles might be dealt with directly by the police officer concerned or referred to the Youth Bureau.

In the result, as Table 1 indicates, of the 789 occurrences reported to and recorded by the police in the patrol district of 5411 as criminal events

TABLE 1

Criminal Occurrences and Clearance Rates
Metropolitan Toronto Police Department
5411 Patrol District: General Occurrence Reports
May 15, 1972 to May 14, 1973

Reported occurrences	789		
Cleared occurrences	315	39.9%	
Manner cleared:	Number	Per cent	Adjusted per cent*
Charge & prosecution: adult	86	10.9	27.3
Charge & prosecution: juvenile	14	1.8	4.4
Unfounded	14	1.8	4.4
Offender unknown but property recovered; offender known only to complainant	62	7.9	19.7
Offender known but insufficient evidence or police—or complainant decline to prosecute	95	12.0	30.2
P/W on charges outside 5411: adult	8	1.0	2.5
P/W on charges outside 5411: juvenile	1	0.1	0.3
Juvenile caution administered	35	4.4	11.2
Total cleared	315	39.9	100.0
Total not cleared	474	60.1	
	789	100.0	

*Adjusted to cleared occurrences only.
SOURCE: Metropolitan Toronto Police Files.

during the project's intake period of May 15, 1972 to May 14, 1973, only 315 or 39.9% were cleared, and of that number only 100 or 12.7% were processed through the courts. The remainder were cleared by a variety of devices, all of them involving some measure of police discretion, whether by recording thefts as "cleared" upon recovery of the stolen property, by declining to record charges against offenders prosecuted in other divisions of the city, or by concurring in or encouraging a decision by the complainant to refrain from pressing formal charges against an offender.

Accordingly, if one believed that the clearance rate (by which police performance is generally evaluated) represented the ratio of crime solved and prosecuted to crime reported to or coming to the attention of the police, the unqualified use of the 39.9% clearance rate would be misleading. Indeed, even within the cleared category, in 7.9% of the occurrences the identity of the offender remained unknown after the investigation was completed and the file closed, 1.8% were in fact non-events, and in 17.5% no charges were in fact laid although the event appeared to qualify as criminal and the identity of the offender was known. Thus, as Table 1 indicates, the "cleared" category comprises a range of sub-categories among which the "cleared by charge" category represents only 12.7% of the total number of occurrences, and 31.7% of all clearances.

It is important to emphasize, however, that these figures do not necessarily reflect a shortfall in police efficiency in the performance of their law enforcement and order maintenance functions. Rather, the inclusion of such a large proportion of discretionary clearances in the police performance index might well be viewed as an operational response to an extraneous standard (the clearance rate) which does not fit comfortably with the realities of the police function. In this sense, the "cleared otherwise" category represents a creative accommodation to an operational reality which merges the dual responsibilities of law enforcement and order maintenance into a concern for conflict management.[7] The immediacy of the pressures for conflict management, together with the perceived (and actual) limitations on the other formal structures of the criminal process that deal with an extended criminal clientele, promote the reliance on police discretionary techniques for processing this clientele. The reservoir of discretionary power which inheres in police control over low-visibility determinations of choice of enforcement targets, procedures, methods, timing and degree of emphasis surfaces in this context in the form of an artificial and inflated clearance rate.

The significance of the magnitude of the discretionary clearances, however, lies less in the fact that it produces an exaggerated clearance rate than in the fact that it emphasizes the relative insignificance of the other sectors of the criminal process—the courts and the correctional institutions—in the management of crime by the police. The occupational demands of the

police function have produced a large-scale system of discretionary justice in which the other sectors of the criminal apparatus are relegated to performing a backup role, invoked only when the police find it inappropriate, impolitic or inconvenient to manage conflict through the exercise of discretion.

The corollary to this observation is of course that there is no direct relationship between reported criminal activity, apprehension of offenders and invocation of the judicial process. The responsibility for law enforcement and maintenance of order, in theory a responsibility shared by all sectors of the criminal process, has in reality devolved upon the police, whether by arrogation or delegation. As a consequence, the alternative of invoking the judicial process through the "cleared by charge" route becomes but one technique in the repertoire of options available to the police for processing their clientele. The articulated responsibility of the police, that of investigation and presentation of the evidentiary base for prosecution, has evolved into an unarticulated responsibiltiy for disposition of its clientelle of offenders. The fact that the "cleared by charge" category (12.7%) represents less than half the proportion of occurrences "cleared otherwise" (27.2%) would appear to indicate comparatively little reliance upon the judicial process in the selection of an appropriate disposition. In other words, the relatively high proportion of discretionary clearances to occurrences cleared by charge suggests that the police have acquired the major responsibility for designating what portion of their clientele will be admitted to the other sectors; more specifically, the intake and hence the function of the other sectors of the criminal process are determinations largely within the control of the police.

A further corollary is that because clearance rates tend to be relied upon as the primary index of police performance, there is a considerable potential for modification of the rates to enhance the appearance of police efficiency. It is, moreover, plausible to suggest that the police are unlikely to be immune from the general tendency of all work organizations which are subject to assessment by clearance rates or similar evaluative criteria: the worker always tries to perform according to his most concrete and specific understanding of the control system. That is, apart altogether from the potential for manipulation of the performance indicators to cover a range of discretionary clearances, it is undoubtedly true that the performance criteria have a reciprocal effect on the nature of the performance itself. The features which characterize the occupational environment of the police—consistent pressure for rate production, a considerable scope for low-visibility initiatives, and an arbitrary but malleable performance index—are conducive to the development of a managerial perspective in which the nature of the function subject to assessment will be adjusted to enhance the institutional image of efficiency.[8]

Informal conversations with Metropolitan Toronto police officers at all levels of authority indicate that the current "political" climate in Toronto is

not one which encourages the under-reporting of criminal activity. To minimize crime rates, as one senior officer pointed out, would be contrary to the best interests of the force, for it would undercut their claim for increased allocations of manpower and resources. Although there would appear to be no immediate incentive to inhibit the levels of known criminal activity, there are nevertheless pressures to modify the clearance rates within those levels. These pressures vary from division to division and derive to a considerable extent from characteristics peculiar to the communities which they service. Thus, for example, there will be relatively little difficulty encountered in a downtown division in producing a clearance rate which compares favourably with other, more suburban divisions of the city, largely because much of the criminal activity in the downtown core area is of such a nature as to permit a direct correlation between offences known to the police and clearances. That is, the relatively higher frequency of drug- and alcohol-related offences, the presence of major department stores with an articulated policy of prosecuting shoplifters, and the availability of police-initiated prosecutions for morality offences such as prostitution, etc., make for little difficulty in production of a satisfactory clearance rate. Indeed, the suggestion was that there was so little pressure for enhancing clearance rates in downtown divisions that the police in those areas could afford the relative luxury of refraining from clearing, either by charge or otherwise, offences which in other divisions would automatically receive a "cleared" designation. If, for example, an offender were apprehended on a series of credit card frauds, it was likely that the only offence to be cleared would be that for which he was prosecuted. The others, although otherwise eligible for further processing, would neither be prosecuted, nor included in the offender's charge file, nor marked "cleared" for police purposes, even though the designation would obviously enhance the division's clearance rates. The indication was that the collateral offences, i.e., those for which the offender was known or believed to be responsible but for which he was not prosecuted, were included within the general occurrence reports as supplementary information, but were not submitted to the central records system. Only if the offender were considered a "rounder", i.e., a more or less permanent and professional object of police attention, or if there were a need for the expediency of "processing tolerance", i.e., a requirement that additional bargaining units be made available to encourage a negotiated plea of guilty, would these collateral offences be included within the charges submitted for prosecution.

In suburban divisions, on the other hand, the nature of the criminal activity generated by the community makes for substantially different police practices. The preponderance of housebreakings, apartment locker thefts, stolen automobiles, the presence of economically marginal shopkeepers without the resources for prosecution of shoplifters, etc.,—offences which pose obvious difficulties for a successful conclusion by investigation, apprehension

and prosecution—create considerable pressures for clearances. The police work-load in such divisions tends to be more intensively oriented to satisfying clearance expectations though follow-up of citizen-reported events rather than through police-initiated activities in which there is a close correlation between event, apprehension and prosecution. The pressure for clearances accordingly appears to translate itself into manipulation of occurrences into clearance categories which are not, strictly speaking, appropriate. Thus, while the "cleared otherwise" category is expressly directed to occurrences which do not permit of a clearance by charge for reasons "outside the police control", it tends to be used, particularly in suburban divisions, almost exclusively to accommodate one form or another of police discretion The result of such wide variations in reporting practices is of course to produce a decidedly unreliable picture of the level of criminal activity in a given division *and* of the level of police intervention in and control of that activity.

The perspective which emerges from this emphasis on rate production entails, to some extent at least, the subordination of the goals of law enforcement to the needs of the managerial function; that is, law enforcement, defined in terms of detection of crime, identification of offenders and consignment of those believed responsible to the judicial process, becomes an instrumentality for achieving those results by which the institution is to be scrutinized and judged. Prosecution, or routing the "cleared by charge" category of offenders through the courts, is accordingly useful only to the extent that it contributes to the support of the managerial role. It is perhaps for this reason that the police tend to rely relatively infrequently upon the courts, declining to process their clientele in a forum in which law enforcement as an institutional rationale is subjected to different evaluative criteria—criteria in latent conflict with those by which the police are assessed. The managerial posture, with its presumption of administrative regularity, is confronted by the presumption of innocence, with its systematized body of procedures designed to constrain official initiatives and interventions undertaken to achieve order.

As a number of commentators have observed,[9] the discretionary capacity which inheres in the police function poses a substantial threat to the rule of law in a democratic society. It is equally true, however, that resort to discretion is both a necessary and an ineradicable feature of the environment in which the police discharge their portion of the responsibility for law enforcement and maintenance of order. Given, in other words, the comprehensive, and indeed almost universal range of candidates eligible for processing, the perceived and actual limitations on the processing capabilities of the other sectors of the criminal apparatus, the nature and level of police interaction with their clientele, the insistence on one-dimensional performance indices for evaluation of a multi-dimensional task, the exercise of discretion by the police becomes a necessary innovative technique for modification of

their responsibility for law enforcement to suit their commitment (or lack of commitment) to institutional goals. All of which serves to emphasize that police discretion tends to be exercised not in random fashion, but rather in patterns consistent with the indices by which police performance is evaluated.

Of the features indicated as characterizing the occupational environment of the police (and there are of course others), most are more or less immutable. The factor most amenable to variation, it is suggested, is that of the performance criteria by which the police are scrutinized and assessed. If the police productivity indices were to be altered to conform more closely with the realities of their function, such a conversion would have a corresponding effect on the police perception of their organizational goals and hence upon the manner in which their discretion is exercised. If they were to receive credit, both personally and institutionally, for restricting the nature and extent of official interventions, for conflict management and resolution at the discretionary level, or indeed for whatever purposes were thought to be appropriate to and consistent with the rule of law, such a redefinition of organizational incentives could have a profound effect upon the texture of the administration of criminal justice.

III OCCURRENCES AND THEIR JUDICIAL CONSEQUENCES

In the preceding section, it was determined that of the 789 criminal occurrences recorded in the patrol area of 5411, 315 (39.9%) permitted of some form of clearance, with the balance of 474 (60.1%) remaining uncleared. Of the 315 which were assigned to clearance categories, 100 (or 12.7% of the total of 789 occurrences) were cleared by charge and 215 (27.2%) were cleared by some form of non-charging option available to the police. The use of non-charging or discretionary clearances in fact exceeded the use of charges by a margin greater than two to one, including determinations by the police that the reported occurrence was unfounded (1.8% of the 789 occurrences reported); that the matter could be concluded upon recovery of the property stolen or upon a request from the complainant to discontinue the investigation, although in neither event was the identity of the offender known to the police (7.9%); that the matter did not warrant prosecution, although the identity of the offender was known and the matter was otherwise eligible for prosecution (12.0%); that prosecution on the 5411 charges would serve no useful purpose because the offender was facing charges in other areas of the city (1.1%, combining adults and juveniles); or that a juvenile caution represented the most appropriate disposition (4.4%).

It is now proposed to confine our attention specifically to those occurrences which were cleared by charge, following them through the judicial process to determine the extent to which police decisions about the eligibility of occurrences for further processing were ratified or rejected in the judicial sector. A brief explanation of the statistical base is, however, first in order.

As was indicated in the introduction,[10] the unit with which we were concerned was the occurrence report, i.e., the report prepared for police purposes to describe a given criminal event. Certain problems of definition are encountered, however, in tracking a given occurrence through the court system—problems not confronted when the information sought was limited to compilation of clearance categories and rates. Out of a given occurrence might come several charges against several offenders, as a consequence of which the case unit for purposes of court follow-up becomes a multiple of the number of charges times the number of offenders. By way of illustration, a single occurrence report describing a house-breaking, for example, might evolve after investigation into a unit comprising charges of breaking and entering and possession of stolen property against three offenders. Thus, the unit for our present purposes becomes a multiple of the number of charges or counts times the number of identified offenders (2×3 discrete elements).

The solution adopted by Robert Hann[11] to permit a computerized tracking through the process was to define his case unit in terms of its key count or charge, identifying the key count by means of a graduated ranking system based on the actual and anticipated demand on court resources by that charge. Having thus identified the key count, he then was able to identify which among a possible several offenders was associated most closely with that count to create his "key offence" unit for use in the court follow-up. This technique served not only to produce a consistent set of identification criteria for determination of the final outcome in terms of findings of guilty or not guilty, but also permitted a description of the proportions of charges and offenders which were discharged from the judicial process en route to a guilty/not guilty determination. Thus, in the example provided, if the final outcome was that one offender pleaded guilty to one charge of possession of stolen property and charges were withdrawn against the other offenders, it would appear in Hann's results as one finding of guilt and five withdrawals.

For the purposes of the EYCLRP court follow-up study, however, if a given occurrence resulted in criminal charges, regardless of how many and against whatever number of offenders, that occurrence was followed through to its conclusion. If, after following the occurrence through the court process, it was determined that all charges were withdrawn, the occurrence was described exclusively in terms of that last stage. If some charges against

some offenders were withdrawn, with the case proceeding against at least one offender, it too was followed to its conclusion and appears in the statistical follow-up as an acquittal or guilty finding, as the case may be. Those charges and those offenders connected with a given occurrence which were eliminated in the course of a finding against at least one offender on at least one charge consequently do not appear in the statistics. Thus, again using the previous example, that occurrence would be described as a finding of guilty, from which one can conclude that the occurrence produced a finding of guilt against at least one offender on at least one charge.

With this description of the information base in mind, an examination of Table 2 indicates that of the 100 occurrences referred to the judicial sector for prosecution, 67 (or 67% of the occurrences cleared by charge) resulted in conviction at the adult level; an additional 14 (14%) resulted in some form of juvenile court disposition.[12] In short, if one approaches the criminal process from the point of view of occurrences and their judicial consequences, rather than from a perspective involving individual offenders and their specific charges, it would appear that police charging decisions

TABLE 2

Occurrences and their Judicial Consequences
Metropolitan Toronto Police Department
5411 Patrol District: General Occurrence Reports

May 15, 1972 to May 14, 1973

Cleared occurrences	315		
Cleared by charge	100	31.7%	
Judicial outcome:	Number	Per cent	Adjusted per cent*
guilty verdict	67	8.5	67
juvenile court dispositions	14	1.8	14
all charges withdrawn before trial	7	0.9	7
last charge dismissed during or after trial	5	0.6	5
not guilty verdict	1	0.1	1
pending	3	0.4	3
unknown	3	0.4	3
Cleared by charge	100	12.7	100
Cleared otherwise or not cleared	689	87.3	
	789	100.0	

SOURCE: Metropolitan Toronto Police Files.
*Adjusted to occurrences cleared by charge only.

are ratified in the judicial sector to the rather remarkable extent of 81%. By contrast the "leakage" from the criminal process at the court level is relatively small: in 7% of the occurrences, the charges were withdrawn by the complainant or the prosecutor before trial; in 5% of the occurrences the charges were dismissed during or after trial by the prosecutor or judge; in 1%, the prosecution resulted in a verdict of not guilty; and in 6% of the occurrences submitted for prosecution, the results were either pending (3%) or unknown (3%) when the project was concluded.

Because it was assumed that juvenile occurrences referred for prosecution would necessarily result in findings of delinquency, all such occurrences have been assigned to the "juvenile court disposition" category; the leakage categories accordingly contain only criminal occurrences involving adult offenders. Table 3 therefore provides for a reorganization of the court follow-up information with the juvenile occurrence category omitted. The substance of the results, however, remains the same, with 77.9% of the occurrences at the adult level concluding in a finding of guilty and the balance being largely discharged from the system through withdrawals, dismissals and verdicts of not guilty.

TABLE 3

Occurrences and their Judicial Consequences: Adult Only
Metropolitan Toronto Police Department
5411 Patrol District: General Occurrence Reports

May 15, 1972 to May 14, 1973

Cleared occurrences: adult
Cleared by charge: adult

Judicial outcome:	Number	Per cent	Adjusted per cent*
guilty verdict	67	8.6	77.9
all charges withdrawn before trial	7	.9	8.1
last charge dismissed during or after trial	5	.7	5.8
not guilty verdict	1	.1	1.2
pending/unknown (combined)	6	.8	7.0
Cleared by charge (adult)	86	11.1	100.0
Cleared otherwise or not cleared	689	88.9	
	775	100.0	

SOURCE: Metropolitan Toronto Police Files.
*Adjusted to adult occurrences cleared by charge only.

Directing our attention to the 67 occurrences which eventuated in a finding of guilty, Table 4 indicates that only 19 (28.4%) of the occurrences were transferred from the judicial sector to the prison system. This figure represents 19% of the occurrences cleared by charge, 6% of the total of 315 cleared occurrences, and 2.4% of the 789 reported occurrences. In the result, only 2.4% of the criminal events which permitted an intervention by the police in their criminal law enforcement capacity produced a client for intake into the prison system. Given the 77.9% rate of ratification of police charging decisions by the courts, it becomes a tenable proposition that the police in fact bear the major responsibility for definition of the intake and hence of the function of the other sectors of the criminal process.

The differences in tracking techniques between the EYCLRP and the Hann study (adverted to earlier in this paper) pose limitations on the extent to which the results of the two projects can be meaningfully compared. As Tables 5 and 5A indicate, there are major points of variance, particularly in the percentages relating to pre-trial withdrawals and guilty verdicts. The significance of the differentials is perhaps clearer if they are expressed as indicating, for example, that 8.1% of the *occurrences* tracked in the EYCLRP study resulted in all charges being withdrawn before trial; by contrast, in Robert Hann's study, 33% of all *charges laid* were dropped or

TABLE 4

Occurrences and their Penal Consequences
Metropolitan Toronto Police Department
5411 Patrol District: General Occurrence Reports
May 15, 1972 to May 14, 1973

Occurrences cleared by charge
Conviction and imprisonment

Outcome:	Number	Per cent	Adj. %*	Adj. %†	Adj. %‡
no prison	16	2.0	5.1	16	23.9
potential prison	32	4.1	10.2	32	47.7
mandatory prison	19	2.4	6.0	19	28.4
juvenile court dispositions	14	1.8	4.4	14	—
judicial leakage	13	1.6	4.1	13	—
pending/unknown	6	.8	1.9	6	—
discr. clearance	215	27.2	68.3	—	—
uncleared	474	60.1	—	—	—
	789	100.0	100.0	100.0	100.0

SOURCE: Metropolitan Toronto Police Department Files.
*Percentage adjusted to base of 315 cleared occurrences.
†Adjusted to base of 100 occurrences cleared by charge.
‡Adjusted to base of 67 occurrences resulting in conviction.

withdrawn before trial. Further, in the EYCLRP study, 77.9% of those occurrences which produced one or more charges resulted in a conviction; whereas in Hann's study, 56% of those *charges* laid resulted in a finding of guilt. The variations thus do not indicate inconsistent findings, but rather reflect the differences in the statistical base. It is not surprising, therefore, that there should be more gross charges withdrawn than there would be

TABLE 5

Occurrences Cleared by Charge and Completed: Adults
Metropolitan Toronto Police Department
5411 Patrol District

May 15, 1972 to May 14, 1973

Occurrences cleared by charge: Adult	86
Occurrences with charges pending	6
Completed occurrences	80

Manner completed:	Number EYCLRP	% EYCLRP	% Hann
Charges withdrawn before trial by pros. or compl....	7	8.75	33
Charges dismissed at or during trial.....	5	6.25	10
Not guilty verdict.....	1	1.25	1
Guilty verdict.....	67	83.75	56
Total occurrences cleared by charge and completed..	80	100.00%	100.0%

TABLE 5A

Disposition of Completed Occurrences: Guilty Verdict
Metropolitan Toronto Police Department
5411 Patrol District

May 15, 1972 to May 14, 1973

Completed occurrences: guilty: # = 67

Manner of disposition:	#EYCLRP	%EYCLRP	%EYCLRP (adj)	% Hann	%Hann (adj)
No potential prison.....	16	23.9	20.00	25.0	14
potential prison.....	32	47.7	40.00	62.5	35
mandatory prison.....	19	28.4	23.75	12.5	7
Total completed and convicted.....	67	100.0%	83.75%	100.0%	56%

SOURCES: Metropolitan Toronto Police Department Files.
Robert G. Hann, *Decision Making in the Canadian Criminal Court System: A Systems Analysis*, Table 12.2, at p. 460.

occurrences in respect of which all charges would be withdrawn; that there should be more occurrences than gross charges resulting in conviction.

It remains to comment briefly on the difficulties encountered in collecting information with respect to the outcome of those occurrences which resulted in charges.

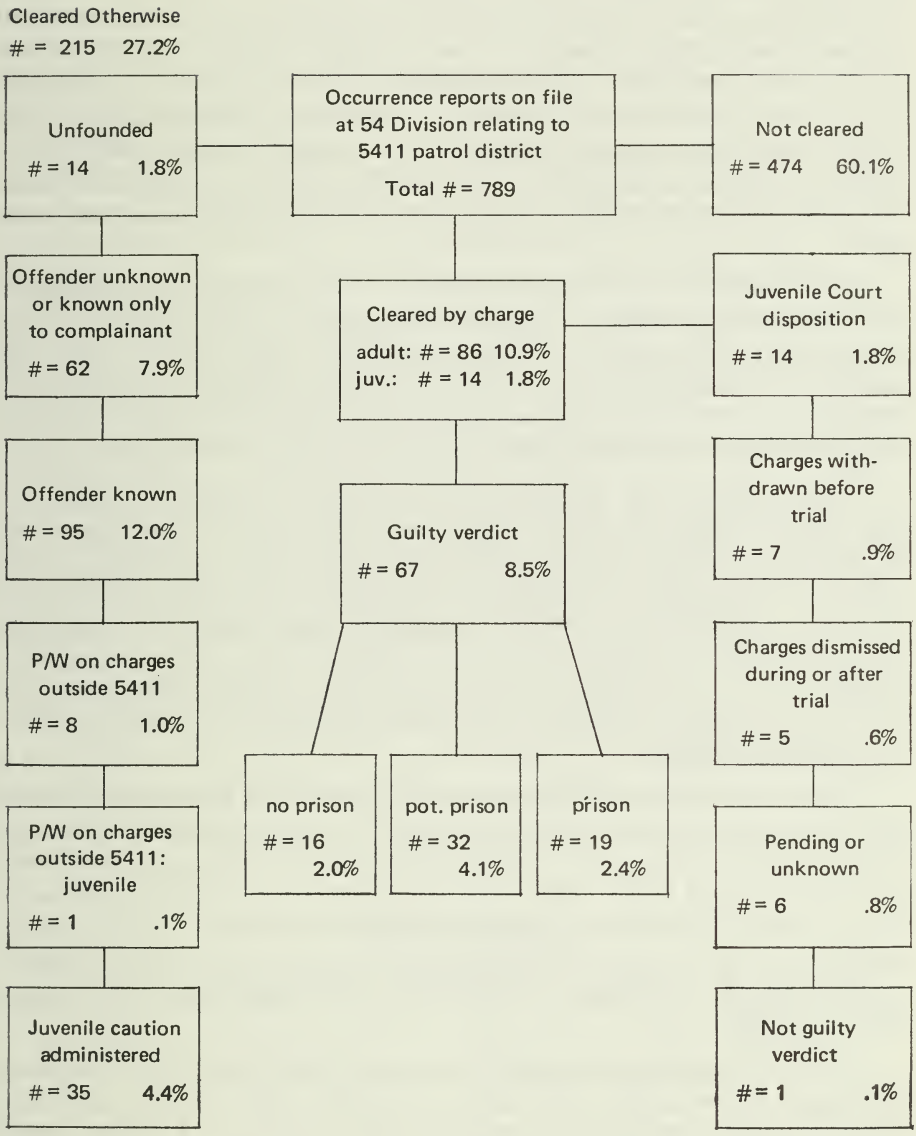
Records were of course maintained at the divisional level of the "cleared by charge" category of occurrences, and these occurrence reports generally speaking contained data concerning the number and nature of charges laid and the number and names of identified offenders associated with that occurrence. Although the record design employed by the police clearly contemplated the incorporation of information on the judicial outcome, it did not appear that any consistent effort had been made to include such data. It was thus possible to obtain reliable information at the divisional level only with respect to the fact of the occurrence and the charges and offenders associated with it. To obtain accurate records of the disposition of these occurrences, it was necessary to secure access to the Criminal Identification Bureau of the Metropolitan Toronto Police at 590 Jarvis Street, where records were maintained of individual offenders (but regrettably not of general occurrences). It was then necessary to trace the offenders identified at the divisional level through the C.I.B. central registry, linking the divisional occurrence report with the items recorded against the individual offender. This procedure was of course painstakingly slow and required that a member of the research staff spend several weeks poring through police files at both 54 Division and the central registry.

Apart altogether from the considerable frustration involved in attempting to determine the judicial outcome of a given set of occurrences, it is perhaps a fair inference that the police themselves do not attach any particular significance to the correlation of occurrences routed through the judicial process and their judicial consequences. The lack of coherent procedures or facilities for tracking occurrences through the courts perhaps indicates a certain indifference to the consequences which follow consignment of a given occurrence to the judicial process. Once the matter has been designated as "cleared by charge" for police purposes, the police performance indices cannot be affected further by that particular occurrence.

Alternatively, these difficulties could indicate an indifference to the relevance of assessing the judicial process within the same set of institutional criteria as are applied to the police. That is, in the absence of a statistical mechanism to relate occurrences to their judicial consequences, the police are presumably assessing the courts according to other institutional criteria—criteria which may tend to amplify police apprehension that a disproportionate number of charges are being withdrawn or dismissed and that numerous offenders are being improperly released as a consequence. In fact, however, as Table 3 and Diagram 1 indicate, the courts would appear to be

DIAGRAM 1

Flowchart of Disposition of Criminal Occurrences
Metropolitan Toronto Police Department
5411 Patrol District
May 15, 1972 to May 14, 1973



reasonably supportive of police decisions to tender an occurrence for further processing. Some 77.9% of the occurrences "cleared by charge" at the adult level produced at least one guilty offender on at least one charge. By contrast, the proportion of occurrences discharged by pre-trial withdrawals (8.1%), by dismissals at or during trial (5.8%), and by not guilty verdicts (1.2%) was relatively small.

Moreover, the mortality rate at the court level, in terms of the number of occurrences which managed to avoid a guilty verdict (15.1%) would appear to be considerably less than the proportion of occurrences discharged at the police level through non-judicial or discretionary vents (27.7%). One obvious qualification on this observation is of course that the results of discretionary venting by the police are less visible and hence may be both more extensive and less amenable to calculation than the discharges at the court level.

The fact that 77.9% of the occurrences "cleared by charge" at the adult level resulted in a verdict of guilty would appear to lend credence to the assertion that the police do not charge innocent people. But to assess the results as a confirmation of the reliability of the presumption of administrative regularity is to obscure the significance of the court follow-up. The more cogent observation is surely that the police do not charge all the guilty people.

Some studies have suggested that the rate of criminality among the population at large may range as high as 91.5%[13] There would appear to be an almost universal eligibility for prosecution, both on the basis of the indictable offence levels indicated in the self-reporting studies and on the basis of the approximately 40,000 regulatory offences said to be available for enforcement in Canada.[14] The proportion of the general population targeted for law enforcement purposes, however, is substantially less than 91% and the problem becomes one of determining how it is that the criminal clientele is selected.

The theories advanced to account for the caseload in the criminal process have been legion. On one end of the spectrum are explanations involving biological factors inherent in the criminal personality;[15] and on the other end are those involving forces which recruit offenders in order to delineate social norms.[16] The latter portion of the spectrum perhaps provides a more adequate explanation and is particularly helpful for present purposes for the insights it offers into the contribution of the police in the identification and disposition of offenders.

Durkheim advanced the thesis that crime ought properly be viewed as an integral feature of the social order, concluding from the fact of its historical continuity that crime was perhaps performing a sort of bonding function, providing the community with a focus for the recognition of shared interests and values. The ceremonies and rituals which characterize group

action against criminal deviance provide an opportunity for a greater appreciation of communal identity and coherence, thereby contributing to the stability of social life. "Crime brings together upright consciences and concentrates them",[17] and thus serves the functional purpose of strengthening the community through collective rejection of the deviant. It further appears that certain of the agencies designed to inhibit deviance actually assist in its perpetuation.[18] Hence Erikson's hypothesis that organizational needs in social ordering may so depend upon deviance that "forces operate in the social structure to recruit offenders and to commit them to long periods of service in the deviant ranks."[19]

In this sense, the police may be described as the agents of social control with primary responsibility for the recruitment of offenders. In the execution of this responsibility, the policeman acquires as a byproduct of his occupational environment a set of predictive formulae which facilitates the identification of offenders. These formulae have both a retrospective and a prospective agency: they operate retrospectively to assemble categories of past experience for prospective application to future situations. The formulae are, moreover, shared with a remarkable degree of organizational consistency within any given police force, less because of selective or biased recruitment procedures than because of what has been termed "convergent expectations".[20] Although subject to a substantial rate of replacement, the police are able nevertheless to maintain continuity in their patterns of response because of the convergence of "everyone's expectation of what everyone expects of everyone—with the new arrivals' expectations being molded in time to help mold the expectations of subsequent arrivals."[21] Consequently, persons designated as deviant for purposes of the criminal process tend to share a good many similar characteristics, for their identification is at least as dependent upon the operational perspectives of the agencies of social control as it is upon the deviants themselves.[22] Although the police constitute only one of the agencies of social control, they are delegated a considerable portion of this responsibility, for it is they who control the selection of offenders from the population at large and determine which among them will be tendered for prosecution.

IV CONCLUSION

The routing of occurrences represented in Table 4 and Diagram 1 clearly suggests the presence of social forces other than the criminal process in the management and resolution of conflict. Of the total number of occurrences reported to the police as criminal events, only 39.9% were accessible to some form of intervention by the criminal process. The residue of 60.1% was left for resolution (or non-resolution) within the community.

Of the 39.9% of occurrences which yielded to official intervention, some 27.2% were sorted out at the police level and disqualified from

making further demands upon the criminal system. In the result, only 12.7% of the occurrences were deemed eligible for further processing by remission to the judicial sector. On consignment to the courts, approximately 8.5% (or 81% of those whose eligibility was established by charge) fulfilled their administrative prophesy of guilt and resulted in the imposition of a judicial sanction. A further 1.6% (or 13% of those eligible) were rejected through withdrawals, dismissals or not guilty verdicts, with the remaining .8% unknown or still awaiting disposition. Of the 8.5% of occurrences which precipitated in the application of criminal penalties, a mere 2% were appropriated by the correction systems, with the remaining 6.5% being transferred back to the community through sentences involving conditional or absolute discharges, suspended sentences, probation or monetary sanctions.

In short, an extensive system of formal and informal vents operates to screen out all but 2% of those occurrences which have the potential for engaging the full range of institutional controls available for the management and resolution of conflict. It is suggested, moreover, that there is a considerable potential for refining and exploiting the informal processes in the criminal system to permit the acquisition of a measure of control over the judicial and correctional intake. One of the least immutable constants in the criminal system is the performance index by which the institutional efficiency of the police is assessed. It is sufficiently flexible, in any event, that a modification of the organizational assessment criteria could have a reciprocating impact on the exercise of discretion by the police, and hence upon the characteristics and function of each of the sectors of the criminal process. It should therefore be possible, through the adjustment of organizational incentives, to convert the exercise of police discretion into patterns which are both supportive of the institutional goals of the police and consistent with the concept of the rule of law.

Diagram 1 and the related tables further serve to suggest that a decision to increase or improve the capabilities of the courts or correction systems would have relatively little impact on the quality of criminal justice. Although the gross intake might be increased, diminished, accelerated or retarded, the primary responsibility for determination of the qualitative features of the intake resides with the police. Not only do they have the major responsibility for governing admission to the other sectors of the criminal process, but the police have also acquired, as a consequence of the discretionary power which inheres in their function, a major portion of the responsibility for disposition of the criminal clientele. Accordingly, measures designed to influence the patterns of police discretion offer a relatively more fruitful opportunity for effecting qualitative changes in the administration of criminal justice.

NOTES

[1]Upon receipt of a complaint of a criminal nature, the investigating police officer prepared what was referred to as a "general occurrence report", setting out particulars with respect to the complainant, the offender, the narrative of events and the patrol district within which the offence took place.

[2] This classification of the types of claims made upon the police for assistance roughly parallels that developed by James Q. Wilson, *Varieties of Police Behavior*, (New York: Atheneum, 1970), 18, except that Wilson's "information" and "service" categories are here combined within the more general category of "social service".

As Wilson observed [at p. 16, n. 1], the distinction between order maintenance and law enforcement is similar to distinctions made by other authors. Michael Banton notes the difference between "law officers" and "peace officers" in his *The Policeman and the Community*, (London: Tavistock, 1964), pp. 6-7. Egon Bitner distinguishes between "law enforcement" and "keeping the peace" in his analysis of patrolmen handling derelicts, "The Police on Skid Row: A Study of Peace-Keeping", in *American Sociological Review*, 32 (October, 1967), pp. 699-715. At a higher level of generality, Eugene P. Wenninger and John P. Clark note that the police have both a value maintenance and a goal attainment function: "A Theoretical Orientation for Police Studies", in Malcolm W. Klein, *Juvenile Gangs in Context*, (Englewood Cliffs: Prentice-Hall, 1967), pp. 161-172.

[3]As Skolnick has pointed out, the designation "cleared" is a police organizational term bearing no direct relation to the administration of criminal law. It merely means that the police believe that they know who was responsible for a given criminal occurrence. It does not indicate, however, *how* the occurrence was cleared: Jerome Skolnick, *Justice Without Trial*, (New York: John Wiley & Sons, Inc., 1966), 168.

[4]*Crime Statistics*, (Ottawa: Information Canada, 1973), 113.

[5]*Crime Statistics, 1971, ibid.*

[6]*Ibid.*, at p. 7.

[7]Or, as Dallin H. Oaks observed in "Studying the Exclusionary Rule in Search and Seizure", *University of Chicago Law Review*, 37 (1970), 665-757, at p. 728: "The patrolman is oriented to approach incidents that threaten order not in terms of enforcing the law but in terms of 'handling the situation'." Although the substance of Oaks' remarks were directed to demonstrating that the immediate impact of judicial attempts to control police operations through such evidentiary constraints as the "exclusionary rule" fell primarily upon the prosecutor, his premise is of equal application in this context, namely, that there is relatively little latitude for the operation of judicially-imposed constraints because the object of much of the challenged conduct is the maintenance of order rather than the prosecution of crime. The police, in other words, have a variety of motives other than the facilitating of prosecutions.

To similar effect is the Report of the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, (Washington, D.C.: U.S. Government Printing Office, 1967), 91:

> A great majority of the situations in which policemen intervene are not, or are not interpreted by the police to be, criminal situations in the sense that they call for arrest, with its possible consequences of prosecution, trial and punishment.

[8]For a discussion of what has been termed the "reactivity of the social indicators" in the context of police operations, see Lawrence J. Center and Thomas G. Smith, "Crime Statistics—Can They Be Trusted?", in *The American Criminal Law Review*, 11(1973), 1045-1086, particularly pp. 1065-1074. At pp. 1065-1067:

> Because police are generally held responsible for controlling crime, political pressure to reduce the crime rate is often focused on them. . . . The local patrolman [has] great discretion in deciding how to record a citizen complaint, or whether to record it at all. . . . [S]ome police have responded to increased political pressure by either downgrading the seriousness of offences or failing to report certain offences that come to their attention. . . . The range for accidental or deliberate misclassification of crime is great. Motivation for purposeful misclassification can come from the realization that these statistics are viewed as a measure of police performance, and that the police have the power to 'improve' their own performance merely by deliberately 'downgrading' or failing to record certain offences. This is a clear example of what . . . researchers call the reactivity of the social indicator: the use of crime statistics as a measure of the police recorder's performance influences the diligence with which he gathers these statistics.

Although Smith's primary focus concerned the inadequacies of the F.B.I.'s Uniform Crime Reports, his identification of "political" pressures upon the police to depress or submerge the reporting of criminal events as one of the major factors in that inadequacy is helpful for present purposes. Similar observations, specifically directed to clearance rates, were made by Skolnick, *supra* note 3, at p. 168:

> What the policeman does in order to amplify clearance rates may have the consequence of both weakening the validity of the clearance rates and interfering with legality and aims of law enforcement.

Skolnick's remarks were prompted by his observation that the police need for the appearance of efficiency tended to render criminality a commodity of exchange, thereby contributing to a reversal of the hierarchy of the penalty structures. In return for the offender's cooperation in admitting to prior offences, the police provide a reduction of charges, the concealment of actual criminality and freedom from investigation of prior offences.

[9]See, e.g., Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry*, (Baton Rouge, La.: Louisiana State University Press, 1969); Joseph Goldstein, "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice", *Yale Law Journal*, 69(1960), 543; Sanford H. Kadish, "Legal Norm and Discretion in the Police and Sentencing Processes", *Harvard Law Review*, 75(1962), 904; and Wayne R. LaFave, "The Police and Non-Enforcement of the Law", *Wisconsin Law Review*, (1960), 104.

[10]*Supra*, n. 1.

[11]Robert G. Hann, *Decision Making in the Canadian Criminal Court System: A Systems Analysis*, (Toronto: Centre of Criminology, University of Toronto, 1973), 95 ff.

[12]Limitations of time and availability of personnel precluded the possibility of tracing juvenile disposition to determine whether a finding of delinquency was actually made. Rather, it was assumed for the purposes of this study that a charge of delinquency would produce a finding of delinquency, a result referred to in Table 2 as a "juvenile court disposition."

[13]James S. Wallerstein & Clement J. Wyle, "Out Law-Abiding Law-Breakers", *Federal Probation*, 25(April, 1947), 110, noted in Richard R. Korn and Lloyd W. McCorkel, *Criminology and Penology*, (New York: Henry Hold and Company, Inc., 1959), p. 5.

[14]Law Reform Commission of Canada Working Paper #2, *The Meaning of Guilt : Strict Liability*, (Information Canada: Ottawa, 1974), 10.

[15]An extreme example of this position might be that of Alfred Wallace, celebrated with Darwin as co-founder of the theory of evolution, writing in 1899:

> In the coming century phrenology will . . . prove itself to be the true science of the mind. Its practical uses in education, in self-discipline, in the reformatory treatment of criminals, in the remedial treatment of the insane, will give it one of the highest places in the hierarchy of the sciences.

Quoted by John D. Davies, *Phrenology, Fad and Science*, (New Haven: Yale University Press, 1955), p. ix and reproduced in Korn and McCorkle, *supra* note 13, at p. 212.

[16]See, e.g., Emile Durkheim, "The Normal and the Pathological", in *The Sociology of Crime and Delinquency*, ed., Marvin E. Wolfgang, Leonard Savitz and Norman Johnston,

(New York: John Wiley and Sons, Inc., 1970), and Kai T. Erikson, *Wayward Puritans*, (New York: John Wiley and Sons, Inc., 1966).

[17]Emile Durkheim, *The Division of Labor in Society*, (New York: The Free Press, 1964), 102.

[18]See, e.g., *A Report of the Commission of Inquiry into the Non-Medical Use of Drugs: Treatment*, (Ottawa: Information Canada, 1972), at p. 12. In assessing the Matsqui, B.C. centre for treatment of drug-dependant persons, the Report states:

> These results led . . . to the hypothesis that the pilot treatment unit program inadvertently promoted a 'well-adjusted, well-educated dope fiend' successful in getting himself over the barrier from the illegitimate world to the legitimate. But the greater self-understanding, formal education, and greater social skills gained in the superior treatment unit were enough to help him to be more successful in the illegitimate world.

[19]Erikson, *Wayward Puritans, supra* note 16, at pp. 13-15.

[20]Thomas C. Schelling, *The Strategy of Conflict*, (New York: Oxford University Press, 1960), 92.

[21]*Ibid.*

[22]For a more comprehensive elaboration of the processes of status ascription, variously termed "categorization", "typification", "labelling", or "routinization", see Rubington and Weinberg, *Deviance/The Interactionist Perspective*, (New York: The Macmillan Company, 1968). Of particular assistance is Thomas J. Scheff, "Screening Mental Patient", *op. cit.*, p. 172 for his analysis of the extent of the contribution of factors external to the patient and his condition in the certification of mental incompetence.

Statistical Follow-up of Criminal Occurrences in Toronto Patrol Area 5411:

An Examination of the Relationships between Victims and Offenders

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1. *Intake Level I: The Reporting of Criminal Occurrences to the Police*

The assimilation and analysis of criminal occurrence patterns in East York suggests that criminal events may usefully be examined in terms of the relationship between their participants, victim and offender. The East York Community Law Reform Project data indicates that a significant proportion of the occurrences reported to the police involved victims and offenders whose relationships with each other preceded the criminal event and their contact with the criminal process. Accordingly, rather than viewing the criminal event as an isolated phenomenon involving only the offender and his specific criminal act, it is helpful for present purposes to approach the event as the culmination or continuation of a process of social interaction between victim and offender.[1] This perspective suggests a casual-functional matrix in which the contribution of the victim is assessed as a necessarily relevant factor to the understanding of the criminal event.

As one proceeds along the continuum of possible relationships from strangers to intimates, a distinction emerges between cases in which the event constitutes and defines the relationship, i.e., criminal events involving what are essentially strangers, and those in which the relationship generates the criminal event, an event grounded in but representing but one facet of that prior association. It is within this latter type of case that one finds the paradigm of intimates engaged in some form of strategic interaction which escalates to the point where one or the other of the parties to the conflict invokes the assistance of the police as part of a search for a controlling medium to assist in the renegotiation or termination of that relationship. Whether the authoritative third-party status of the police is sought for the continued escalation of the strategic interaction or for interpersonal conflict resolution, it is rarely sought unequivocally with a view to precipitating criminal sanctions *per se*. Rather, the complainant entertains a vague expectation that the offending party or his conduct will somehow thereby be contained. The motivation in applying to the police for assistance, in other words, is less to prosecute than to limit or escalate the dimensions of the conflict by means of an authoritative third-party intervention. It is suggested, moreover, that it is often the absence of alternative support systems which suggests the use of the police, as the most visible, responsive, 24-hour social service agency.

Between the paradigms of strangers and intimates, there is an intermediate range on the continuum in which the criminal event, though not *generated* by the prior relationship, nevertheless can be said to *arise* out of

the context of that association. Although these relationships lack the intensity of the bilateral monopoly which defines the paradigm of intimates, they do demonstrate a sufficient measure of reciprocity and interdependence to suggest that the parties may be using the criminal process for interpersonal conflict resolution. It is implicit within the dynamics of the relationship either that the association will continue beyond the intervention of the criminal process or that the criminal process will be used to sever the association. Thus, for example, the complainant (if not both participants) in a conflict involving husband and wife, boyfriend and girlfriend, employer and employee, etc., may expect the relationship to survive the criminal event and the intervention of the criminal process. In such cases, it can be suggested that the criminal process is being invoked as an aid to their interpersonal conflict resolution, for the purpose of renegotiating or realigning their relationships. Alternatively, within the same kinds of relationships, it may be that the complainant is invoking the criminal process with the expectation of utilizing its authoritative third-party status to conclude the strategic interaction by terminating the relationship.

While it is not possible to attribute a specific motivation to those who sought assistance from the police in the East York sample, it is possible to suggest that a significant portion of the clientele of the criminal justice system is made up of victims and offenders engaged in dyadic conflict; that they are ingested by the criminal justice system in the course of their attempts to renegotiate or terminate their relationships; and that this clientele can be located within the categories of offences against the person and offences against property.

Accordingly, with a view to determining what portion of the criminal justice system's capacity is directed to management of interpersonal conflict, the occurrences reported to the East York Project were divided into six categories: (1) offences against the person; (2) offences against property; (3) offences against public order; (4) victimless offences; (5) criminal motor vehicle offences; and (6) juvenile status offences.[2]

This organization was imposed primarily with a view to isolating those offence types which by definition would involve offenders and specifically identifiable victims other than the state or its representatives (such as the police). By separating the categories which preclude the possibility of victim-offender interaction, either prior to or as part of the criminal event, and restricting the inquiry to offences against the person and offences against property, it becomes possible to interpret the data in terms of the relationship, if any, between victim and offender.

As Table 1 indicates, there were a total of 789 criminal occurrences reported, of which the major proportion were offences against the person (74 or 9.4%) and offences against property (645 or 81.7%). Of the 719

offences in these categories (offences against the person and offences against property), 259 (36.0%) permitted some form of clearance by the police; that is, the matter was investigated by the police at least to the point where they were satisfied that they had identified the person believed responsible for the occurrence, or, alternatively, that the matter could be concluded upon recovery of the stolen property. Although the caseload is substantially reduced by the elimination of uncleared offences, their exclusion will not materially affect the interpretation of the results because our primary interest is in assessing the proportion of pre-existing relationships in the criminal justice system. Thus, only those cases which have been cleared by the police are eligible for the application of criminal charges and admission to the criminal justice system. One further qualification on the data also warrants mention; there were 78 occurrences in which it was not possible to determine the relationship, if any, between victim and offender from the information available. Of this number, 62 occurrences, generally involving stolen automobiles or bicycles, had been designated "cleared" by the police upon recovery of the stolen property, although there had not been an identification of the offender believed responsible. A further 14 offences reported to the police had been cleared and marked "unfounded"; as no offence had been found to have been committed, no one could be designated as an offender. The information available did not permit a determination of the relationship, if any, between victim and offender in the remaining 2 occurrences. This category of relationships has been included in the tables as "unknown" and distinguished from those occurrences in which it was unequivocally clear that there was no relationship.

TABLE 1

Criminal Occurrences Reported to Police

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Offence	Number	Per cent
Crimes Against the Person:		
Common Assault	33	4.2
Assault bodily harm	10	1.3
Assault with intent	1	0.1
Rape	1	0.1
Indecent Assault	11	1.4
Robbery	14	1.8
Threatening	4	0.5
	74	9.4

TABLE 1 (*Concluded*)

Offence	Number	Per cent
Crimes Against Property:		
Theft under $50	272	34.5
Theft $50 and over	173	21.9
Possession under	3	0.4
Possession over	4	0.5
Attempted Theft	16	2.0
Break and Enter	81	10.3
Fraud	4	0.5
False Pretences	10	1.3
Forgery	10	1.3
Wilful damage	62	7.9
Counterfeiting	1	0.1
Arson	8	1.0
Attempted entry	1	0.1
	645	81.7
Offences Against Public Order:		
Assault police officer	1	0.1
Obstruct police	2	0.3
Indecent exposure	15	1.9
Concealed weapon	1	0.1
Creating a disturbance	10	1.3
Breach of probation	1	0.1
Discharge a firearm	2	0.3
Impersonate an officer	1	0.1
Obscenity	1	0.1
Vagrancy	1	0.1
	35	4.4
Victimless Offences:		
Narcotics	9	1.1
Alcohol	1	0.1
Attempted suicide	3	0.4
	13	1.6
Criminal Driving Offences:		
Fail to remain	2	0.3
Impaired driving	12	1.5
Driving with over 80 mg	2	0.3
Dangerous driving	1	0.1
Criminal negligence	1	0.1
Driving while suspended	1	0.1
	19	2.4
Non-Criminal Juvenile Delinquencies:		
Glue sniffing	3	0.4
	3	0.4
Total Occurrences	789	100.0

Table 2 indicates the relationships between victim and offender over all categories of offence among the 315 occurrences which were cleared by police. Thus, at the first level of intake into the criminal justice system, the reporting of criminal events to the police, pre-existing relationships were noted in 31.7% of the cases; in 25.7% it was evident that there had been no prior association between victim and offender; in 24.8%, the relationship, if any, was unknown, generally because the matter had been cleared without the investigation proceeding to the point of identifying the offender; and in 17.8% of the cases, the nature of the offence precluded the possibility of a specifically identifiable offender.

The data was then reorganized to eliminate the offence types which by definition excluded the possibility of victim-offender relationships (the "not applicable" item). Table 3 thus describes the frequency of relationships between victim and offender in the categories of cleared offences against the person and offences against property. Within these categories, one finds a series of relationships varying in intensity from family, friends and relatives to neighbours to commercial associations.[3] The presence of pre-existing

TABLE 2

Relationships between Victim and Offender
Cleared Criminal Occurrences

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Reported occurrences (all categories)	789
Cleared occurrences	315

	Number	Per cent	Adjusted per cent*
Some Relationship:			
Family	12	1.5	3.8
Neighbour known	21	2.7	6.7
Neighbour unknown	23	2.9	7.3
Other friends and relatives	28	3.6	8.9
Commercial	16	2.0	5.0
	100	12.7	31.7
No relationship	81	10.3	25.7
Unknown	78	9.9	24.8
Not applicable	56	7.1	17.8
Total cleared	315	40.0	100.0
Total not cleared	474	60.0	
	789	100.0	

SOURCE: Metropolitan Toronto Police Files.
*Adjusted to cleared occurrences only.

relationships was observed in 38.6% of the cleared occurrences within these categories, with that of "neighbour known and unknown" accounting for the largest single type of relationship. The data further indicates that in 31.3% of the cases, there had not been a pre-existing relationship between victim and offender in cases involving offences against the person and offences against property. In 30.1% of these cases, the relationship, if any, was unknown.

The figures in the adjusted per cent column in Table 3 demonstrate the relative frequency of prior relationships when the "unknown" occurrences (those in which it could not be determined whether there was a pre-existing relationship) are excluded. As indicated, the major portion of these occurrences were cleared by an investigation which fell short of identifying the offender. Because no offender was identified, these occurrences cannot be taken into the criminal justice system by way of charge and may accordingly be excluded for present purposes, i.e., assessing the frequency of claims on the criminal justice system by victims and offenders whose

TABLE 3

Relationships between Victim and Offender
Cleared Offences against the Person and Property Offences

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Reported occurrences (all categories)	789
Reported occurrences against person and property	719
Cleared occurrences against person and property	259

	Number	Per cent	Adjusted per cent*
Some Relationship:			
Family	12	4.6	6.6
Neighbour known	21	8.1	11.6
Neighbour unknown	23	8.9	12.7
Other friends and relatives	28	10.8	15.4
Commercial	16	6.2	8.9
	100	38.6	55.2
No relationship	81	31.3	44.8
Unknown	78	30.1	
Total	259	100.0	100.0

SOURCE: Metropolitan Toronto Police Files.

*Excluding occurrences in which relationship unknown. These occurrences were primarily offences cleared on recovery of stolen property but in which no offender was identified, or occurrences designated "unfounded" by the police. In either event, no offender had been or could be identified by the police.

associations with each other pre-existed the criminal event and who may be invoking the criminal justice system for the purpose of resolving or escalating their interpersonal conflict. From this standpoint, it can be said that 55.2% of the criminal events reported to and cleared by the police involving specifically identifiable victims and offenders arose out of the context of some form of pre-existing relationship.

When the categories of offences against the person and offences against property are examined separately (Tables 4 and 5), we find that the frequency of prior associations in crimes against the person (84.9%) is considerably higher than that of property crimes (43.0%). It should be noted, however, that the frequency of prior associations within the property crimes category is itself of some considerable significance because of the relatively larger number of such offences. Numerically, property offences represented 645 of 789 (81.7%) of the total police caseload of reported occurrences in the project area. That 43% of the cleared property offences and 84.9% of the offences against the person in which the offender was specifically identified should arise out of some form of prior association between victim and offender suggests the presence at the first level of intake into the criminal justice system of a substantial clientele which could be said to be engaged in some form of interpersonal conflict.

TABLE 4

Relationships between Victim and Offender
Cleared Offences against the Person

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Reported offences against the person	74
Cleared offences against the person	54

	Number	Per cent	Adjusted per cent*
Some relationship:			
Family	8	14.8	15.1
Neighbour known	12	22.2	22.6
Neighbour unknown	2	3.7	3.8
Other friends and relatives	20	37.0	37.7
Commercial	3	5.6	5.7
	45	83.3	84.9
No relationship	8	14.8	15.1
Unknown	1	1.9	
Total	54	100.0	100.0

SOURCE: Metropolitan Toronto Police Files.

*Adjusted to exclude occurrences in which relationship unknown. As indicated, there was only one such occurrence in this offence category.

2. *Intake Level II: The Consignment of Criminal Occurrences to the Courts*

It is now proposed to examine the police responses to these occurrences to determine what portion of this clientele reaches the second level of the criminal justice system, the courts. Collaterally, by determining what proportions of previously associated victims and offenders are transferred to the judicial sector by the police, it should be possible to gauge the effect, if any, of the presence of a pre-existing relationship between victim and offender on the police use of charging options in their disposition of cleared criminal occurrences.

As indicated, of the 719 occurrences in the categories of offences against the person and offences against property, 259 (36.0%) were cleared by the police. If we exclude from this figure the occurrences in which the investigation stopped short of identifying the offender (62); the occurrences which were designated "unfounded" after police investigation (14); and the occurrences involving juvenile offenders (43), we are left with 140 occurrences which were theoretically eligible for prosecution at the adult level. Of the 140 cases eligible for prosecution, charges were laid in only 16 of the 46 eligible offences against the person and 32 of the 94 eligible property offences. There

TABLE 5

Relationship between Victim and Offender
Cleared Property Offences

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Reported offences against property	645
Cleared offences against property	205

	Number	Per cent	Adjusted per cent*
Some relationship:			
Family	4	2.0	3.1
Neighbour known	9	4.4	7.0
Neighbour unknown	21	10.2	16.4
Other friends and relatives	8	3.9	6.3
Commercial	13	6.3	10.2
	55	26.8	43.0
No relationship	73	35.6	57.0
Unknown	77	37.6	
Total	205	100.0	100.0

SOURCE: Metropolitan Toronto Police Files.

*Adjusted to exclude occurrences in which relationship unknown.

was thus a total of 48 charges within the categories of offences against the person and property offences, with the remaining 92 occurrences disposed of by means of some form of non-charging option.

When the categories of offences against the person and property are considered together (Table 6), we find that 41.7% of the caseload of the criminal justice system for these types of offences at the court-intake level

TABLE 6

Relationships and Prosecutions
Cleared Offences against the Person and Property Offences

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Reported occurrences against person and property	719
Cleared occurrences	259
Cleared and eligible for prosecution (adult)	140

	Charge #	(%)	No Charge #	(%)
Some relationship:				
Family	0	(0.0)	10	(10.9)
Neighbour known	2	(4.2)	10	(10.9)
Neighbour unknown	1	(2.1)	4	(4.4)
Other friends and relatives	11	(22.9)	13	(14.1)
Commercial	6	(12.5)	6	(6.5)
	20	(41.7)	43	(46.8)
No relationship	23	(47.9)	45	(48.9)
Unknown	5	(10.4)	4	(4.3)
Total	48	(100.0)	92	(100.0)

TABLE 6A

Relationships and Prosecutions

Cleared Offences against the Person and Property Offences

Occurrences eligible for prosecution (adult)	140
Occurrences prosecuted	48

	Relationship			No Relationship or Unknown		
	No.	(%)	Ratio	No.	(%)	Ratio
Charge	20	(31.8)	1	28	(36.4)	1
No charge	43	(68.2)	2.2	49	(63.6)	1.8
Total	63	(100.0)		77	(100.0)	

SOURCE: Metropolitan Toronto Police Files.

is comprised of occurrences in which there was some form of pre-existing relationship between victim and offender. The remainder of the intake is comprised of occurrences in which either there was no such relationship (47.9%) or the relationship, if any, was unknown (10.4%). When the offence categories are considered individually (Tables 7 and 8), the indications are that 68.7% of the prosecutions for offences against the person

TABLE 7

Relationships and Prosecutions
Cleared Offences against the Person

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Reported offences against person	74
Cleared occurrences	54
Cleared and eligible for prosecution (adult)	46

	Charge		Charge	
	No.	(%)	No.	(%)
Some relationship:				
Family	0	(0.0)	8	(26.7)
Neighbour known	1	(6.3)	7	(23.3)
Neighbour unknown	1	(6.3)	1	(3.3)
Other friends and relatives	7	(43.6)	11	(36.7)
Commercial	2	(12.5)	1	(3.3)
	11	(68.7)	28	(93.3)
No relationship	5	(31.3)	2	(6.7)
Total	16	(100.0)	30	(100.0)

TABLE 7A

Relationships and Prosecutions

Cleared Offences against the Person

Occurrences eligible for prosecution (adult)	46
Occurrences prosecuted	16

	Relationship			No Relationship or Unknown		
	No.	(%)	Ratio	No.	(%)	Ratio
Charge	11	(28.2)	1	5	(71.4)	2.5
No charge	28	(71.8)	2.6	2	(28.6)	1
Total	39	(100.0)		7	(100.0)	

SOURCE: Metropolitan Toronto Police Files.

and 28.1% of the prosecutions for property offences involve a prior association between victim and offender. Although the significance of these proportions of pre-existing relationships at the charging level must be qualified by the small size of the sample, it is nevertheless a fair inference from the tables that such occurrences account for a substantial portion of the workload of the criminal justice system.

TABLE 8

Relationships and Prosecutions
Cleared Property Offences

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Reported property offences	645
Cleared property offences	205
Cleared and eligible for prosecution (adult)	94

	Charge		No Charge	
	No.	(%)	No.	(%)
Some relationship:				
Family	0	(0.0)	2	(3.2)
Neighbour known	1	(3.1)	3	(4.8)
Neighbour unknown	0	(0.0)	3	(4.8)
Other friends and relatives	4	(12.5)	2	(3.2)
Commercial	4	(12.5)	5	(8.1)
	9	(28.1)	15	(24.1)
No relationship	18	(56.3)	43	(69.4)
Unknown	5	(15.6)	4	(6.5)
Total	32	(100.0)	62	(100.0)

TABLE 8A

Relationships and Prosecutions
Cleared Property Offences

Occurrences eligible for prosecution (adult)	94
Occurrences prosecuted	32

	Relationship			No Relationship or Unknown		
	No.	(%)	Ratio	No.	(%)	Ratio
Charge	9	(37.5)	1	23	(38.3)	1
No charge	15	(62.5)	1.7	47	(61.7)	2.0
Total	24	(100.0)		70	(100.0)	

SOURCE: Metropolitan Toronto Police Files.

If one examines the distribution of charging options within the relationship categories (by making horizontal comparisons within the individual relationship categories in Tables 6, 7 and 8), one finds that the ratio of charging options to non-charging options tends to vary with the intensity of the relationship. If one accepts the vertical ordering of the relationship categories as a rough approximation of the anticipated variation in the intensity of possible relationships, one finds that the ratio of charging to non-charging options increases from 0:10 in the "family" category to 1:5 in the "known neighbour" category; to 1:4 in the "unknown neighbour" category; to 1:1.8 in the "other friends and relatives" category; to 1:1 in the "commercial" category. It would accordingly appear that the use of charging options increases as the nature of the relationship becomes less intense. Again, although the size of the numerical base suggests a need for caution in interpreting these figures, the same inverse ratio between the use of charging options and the intensity of the relationship holds both for offences against the person and property offences when these offence categories are considered separately (Tables 7 and 8).

Table 6A indicates that when the relationship categories are collapsed to "relationship" or "no relationship" and both offence categories are considered together, it appears that the presence of a pre-existing relationship has little, if any, effect on whether the occurrence will proceed to prosecution. The probabilities against prosecution over both categories were 2.2:1 with a pre-existing relationship and 1.8:1 in the absence of such a relationship. There does, however, appear to be a significant difference in the likelihood of prosecution when the offence categories are considered separately (Tables 7A and 8A). Again, although the numbers are perhaps too few to attach much weight to the results, Table 7A suggests that the odds against a prosecution for an offence against the person in a situation involving a prior association between victim and offender (2.6:1) are almost precisely reversed in the absence of such a relationship (1:2.5). In the result, it would appear that an individual offender stood a relatively better chance of avoiding prosecution for an offence against the person if his victim was one with whom he had some prior association, despite the fact that the matter had reached the stage of being reported to the police.

Moreover, a comparison of Tables 7A and 8A suggests that the offender's opportunities for avoiding prosecution for an offence against the person (2.6:1) are greater than those for a property offence (1.7:1), even though both offences may involve a prior relationship between victim and offender.

One factor which might account for these differentials is that in cases of common assault (the largest single type of offence against the person) the charging option resides with the complainant; the police, in other words, do not accept responsibility for initiating prosecutions for common assault

and instead advise complainants to attend before a justice of the peace and swear out an information if they wish to pursue the complaint to prosecution. As a consequence, given the high number of prior relationships in cases of common assault (24 of 26), one might expect that the attendant low rate of charging (7 of 24) among common assaults involving victims and offenders with a prior association would weight the whole category of offences against the person toward a low rate of use of charging options. The low frequency of charging options in common assaults would accordingly depress the

TABLE 9

Relationships and Prosecutions
Cleared Common Assault Occurrences

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Common Assaults Reported	33
Cleared and eligible for prosecution (adult)	26

	Charge		Charge	
	No.	(%)	No.	(%)
Some relationship:				
Family	0		7	
Neighbour known	1		6	
Neighbour unknown	1		1	
Other friends and relatives	5		3	
Commercial	0		0	
	7	(87.5)	17	(94.4)
No relationship	1	(12.5)	1	(5.6)
Total	8	(100.0)	18	(100.0)

TABLE 9A

Relationships and Prosecutions: Common Assault

Occurrences eligible for prosecution (adult)	26
Occurrences prosecuted	8

	Relationship			Relationship or Unknown		
	No.	(%)	Ratio	No.	(%)	Ratio
Charge	7	(29.2)	1	1	(50.0)	1.0
No charge	17	(70.8)	2.4	1	(50.0)	1.0
Total	24	(100.0)		2	(100.0)	

SOURCE: Metropolitan Toronto Police Files.

frequency of charging options both in the category of offences against the person as a whole and with reference to property offences.

To test this hypothesis, the common assault occurrences were segregated (Tables 9 and 10) and their charging frequencies contrasted with the remaining offences against the person. As might be expected, the indications are that charging frequencies appear to depend more on whether the prosecutorial initiative resides with the police or with the complainant than on the presence or absence of a prior relationship between victim and offender.

TABLE 10

Relationships and Prosecutions
Cleared Offences against the Person other than Common Assault

Metropolitan Toronto Police Department
5411 Patrol District: May 15, 1972 to May 14, 1973

Other reported offences against the person	41
Cleared and eligible for prosecution (adult)	20

	Charge		No Charge	
	No.	(%)	No.	(%)
Some relationship:				
Family	0		1	
Neighbour known	0		1	
Neighbour unknown	0		0	
Other friends and relatives	2		8	
Commercial	2		1	
	4	(50.0)	11	(91.7)
No relationship	4	(50.0)	1	(8.3)
Total	8	(100.0)	12	(100.0)

TABLE 10A

Relationships and Prosecutions: Other Offences against the Person

Occurrences eligible for prosecution (adult)	20
Occurrences prosecuted	8

	Relationship			Relationship or Unknown		
	No.	(%)	Ratio	No.	(%)	Ratio
Charge	4	(26.7)	1	4	(80.0)	4
No charge	11	(73.3)	2.8	1	(20.0)	1
Total	15	(100.0)		5	(100.0)	

SOURCE: Metropolitan Toronto Police Files.

Thus, the ratio of police-initiated prosecutions within the category of offences against the person (8:12 or 1:1.5) is higher than the ratio of complainant-initiated prosecutions (8:18 or 1:2.3). The presence of a prior relationship, however, appears to have a less noticeable effect on the decision to prosecute, whether by police or complainant (1:2.8 and 1:2.4 respectively). Although it would clearly be preferable to test this sample with a larger base, the tentative indications from the data are that private complainants tend not to use the option of charging as often as the police when they have the responsibility for initiating the prosecution, and, moreover, that this tendency creates a lower rate of prosecutions for offences against the person than for property offences.

3. *The Clientele Identified*

The examination of criminal occurrence patterns in the patrol district of 5411 suggests the presence of significant proportions of previously-associated victims and offenders. Among the occurrences reported to and cleared by the police over all categories of offence, pre-existing relationships between victim and offender were noted in 31.7% of the cases. When the focus was confined to offences against the person and property offences—thereby excluding victimless crimes, motor vehicle offences, juvenile status crimes and what were termed offences against public order—the proportion of pre-existing relationships among the occurrences cleared by police was 55.2%. It was also observed that although the frequency of such relationships was considerably higher among offences against the person than property offences (84.9% and 43.0% respectively), the relatively larger number of property offences meant that a significant portion of the police workload was made up of offences involving prior associations between victim and offender.

When the occurrence patterns were organized to permit an examination of the frequency of pre-existing relationships at the court-intake level, it was noted that 23.3% of the occurrences which culminated in adult prosecutions over all offence categories involved previously-associated victims and offenders. Within the categories of offences against the person and property offences, 41.7% of the adult occurrences consigned to the courts by way of charge involved victims and offenders whose relationships with each other preceded the criminal event.

It is within this 41.7% that one could expect to find the phenomenon of strategic interaction between previously-associated victims and offenders culminating in the invocation of the judicial process. As the conflict escalates, one or the other of the parties to the dispute requests assistance from the police, with a view either to limiting or extending the dimensions of the conflict. The request for police intervention, in other words, is itself part of the process of strategic interaction. The complainant is more anxious to contain the offending party in his conduct than to ensure that he is appropriately

punished. In the result, the search for an authoritative third-party intervention culminates in a demand upon the criminal justice system for assistance in the renegotiation or termination of the relationship between victim and offender.

The fact that an inverse ratio was observed between the intensity of the prior relationship and the use of charging options suggests the efficacy of short-term interventions by the police as an adjunct to interpersonal conflict resolution. It will be recalled that the frequency of occurrences resulting in criminal charges declined as one moved along the continuum of possible relationships from "strangers" to "commercial" to "other friends and relatives" to "neighbours" to "family". Thus, none of the reported occurrences involving members of an immediate family proceeded to prosecution; all such occurrences were in fact vented out of the criminal justice system through some form of non-charging option. That the criminal conflict generated within family relationships could be defused at the police level without laying criminal charges suggests that the motivation for seeking police intervention was to secure the assistance of an authoritative third party for interpersonal conflict resolution and, moreover, that that end was achieved without the need for further penetration into the criminal justice system. Further, that there should be a progressively greater use of criminal charges as the intensity of the association declines suggests the presence of dynamics within relationship-generated conflict which militate toward extra-judicial resolution of conflict which otherwise qualifies for criminal prosecution.

It will also be recalled, however, that when the relationship categories were collapsed in order to determine whether the presence of a prior association between victim and offender affected police charging practices, it was observed that there was no gross correlation between the presence of such relationships and the police use of charging options. Further, it appeared that the decision to prosecute was more a function of the location of the responsibility for initiating the prosecution, whether with the police or the complainant, than the presence of a pre-existing relationship between victim and offender. It was also noted that when the prosecutorial initiative resided with private complainants (as in the cases of common assault), they tended to proceed to prosecution less often than did the police when the decision to prosecute was primarily within police control (as in property offences and offences against the person other than common assault).

The examination of criminal occurrence patterns in the 5411 patrol district also demonstrates that relatively few of the occurrences otherwise eligible for prosecution are in fact disposed by way of charge. Although the majority of occurrences reported were vented out of the criminal justice system at the police level, the decision to screen a case out of the system or consign it to the courts appears not to depend on the presence of a pre-existing relationship between victim and offender. Accordingly, it would

appear worthwhile to examine police charging practices somewhat more closely to determine whether the factors which influence their decision to charge derive from characteristics inherent in the criminal event and its participants or from concerns peculiar to police organizational and operational needs. If, in other words, police charging practices should prove to be largely a function of their own institutional concerns, consignment to the judicial sector may not be the most appropriate disposition for those whose presence in the criminal justice system is largely a consequence of their efforts at renegotiating or terminating their relationships with each other.

APPENDIX

Preface

One often hears the complaint that a statistical report does not enable the reader to get a feel for the subject under discussion. Any report based on numbers will be difficult to absorb—especially in a criminal justice system with 40,000 offences and over 2,000,000 criminal occurrences a year.

The following appendix tries in a small way to bridge the gap between the statistical reports that precede it and the theoretical paper that follows. It is just a glimpse at people's attitudes toward the criminal justice system and the phenomenon of victimization. But without this attachment, it is impossible to provide the reader with a true view of the extent of the research.

Client Interviews

VICTIM No. 1: Bill

Offence: False pretences—July 15, 1972.

Interview date: February 15, 1973.

1. *The Offence*

Bill operates a small, retail men's wear store. On July 15, 1972 he sold several items of clothing to a customer who claimed to have been referred to him by the manager of the nearby hotel. The customer gave him a cheque in the amount of $72.00 which was subsequently returned by the bank marked "no such account". On the cheque's return, Bill first contacted the hotel manager to ascertain whether the customer had indeed been referred by him. The manager verified the referral and advised that the customer often spent Friday evenings in the hotel's beer parlour. It was then arranged that should he reappear, the hotel manager would contact the victim.

Bill's normal practice was to protect himself from such frauds by permitting chequing privileges only to known customers, or occasionally to those with some claim to associations with him, as, for example, through

referrals from known customers. In the latter event, however, he required satisfactory proof of identification. Moreover, he generally requested that the merchandise be picked up the following day, permitting him to cash or certify the customer's cheque in the interim. On limited occasions, he made exceptions to these rules, permitting a purchase by cheque if the customer were accompanied by his wife and otherwise appeared respectable and reliable. Although he sometimes took in as much as $2,000 per week in cheques, he claimed to be able to limit the number of frauds to two or three per year.

On this occasion, however, Bill's suspicions were allayed by the fact that the customer claimed to have been referred by the hotel manager, that he was methodical and selective in his purchases, that he showed satisfactory proof of identification, and that he claimed to have his own tailor whom he would prefer to do the necessary alterations. Thus, Bill elected to forego his usual device of alterations for ensuring that he would have sufficient time to cash or certify the customer's cheque.

Bill had a long history of prior victimization, all of it in connection with his clothing business. His primary risks were fraudulent cheques and what he referred to as "smash and grabs"—risks which he rather philosophically acknowledged as inevitable: he was compelled by the nature of his business to accept cheques and to display his merchandise in the store windows. He took what precautions he could by limiting chequing privileges, by installing an S.I.S. alarm system, and by renting the apartment above the store to reliable tenants to give the appearance of activity about the premises, and simply calculated his losses (which he put at 3% of his gross) into his prices and profit margins. He had, moreover, moved his business in 1962 in the hope of minimizing his incidence of victimization. His prior location was, according to the victim, "... a tough area ... there are fellows there during the day that never worked—they hung around continually ... mostly Anglo-Saxons, too ... a bad area—purse snatching, women getting beat up at night, filthy language, women couldn't walk the street at night ... the area got progressively worse and then they cut off my insurance so there was no way I could stay there.... Also, it's not the loss of merchandise. It's a pain in the ass. You know, the police phone you at three in the morning and it got so bad that one year I must have had eight of them...."

2. *Contact with the Criminal Process*

(a) *The police*

After assuring himself that he had indeed been defrauded and taking what steps he could to locate the offender, Bill then reported the matter to the police. The police attended to take particulars and suggested that he should

attend at Room 6 of the Old City Hall to swear out a warrant for the arrest of a "person unknown", advising also that he should not attempt to apprehend the offender himself but rather should contact the police who would then effect the arrest on the authority of the outstanding warrant. Bill did not in fact attend at the Old City Hall, largely because he was given the impression by the attending police officer that there was little to be gained by obtaining a warrant for the arrest of a "person unknown". Whether it is in fact a useless procedure or whether its sole purpose is to protect the police from allegations of false arrest if they attempt to make an arrest on third party information after the event, or whether indeed it is a form of demonstration of good faith required by the police to satisfy them as to the victim's willingness to prosecute [there were a number of explanations advanced by the various police officers with whom this procedure was discussed], when the offender was arrested two days later and arraigned with a number of counts of false pretences on transactions throughout the city, this particular occurrence was not among them. The victim was neither advised of the offender's apprehension nor of his subsequent conviction.

Because the subject's victimization was related solely to his business operation, his requests for police assistance tended to be in the nature of adjuncts to the conduct of that business. That is, he invoked the assistance of the police in the case of breaking and enterings not in the expectation that the offender would be apprehended, but rather to satisfy his reporting obligations for insurance purposes. In the case of fraudulent cheques, the police were called only after he had exhausted his own attempts at collection. Again, he had no real expectation that the offender would be apprehended, but rather notified the police much in the manner of referring a hopeless account to a collection agency—as the last and least productive of a sequence of remedies available to him for collection of his trade accounts.

As a consequence, Bill had somewhat limited expectations for assistance from the police. He professed himself accordingly to be satified with their performance, despite the fact that he had rarely received any tangible results in terms of apprehension of offenders from the police and despite what appear to have been inadequate police services to the victim: *e.g.,* being advised to attend at City Hall to swear out an information for the arrest of a person unknown if he wished to pursue the matter further; not being advised of the offender's apprehension and conviction; arriving at a break-in with the alarm still ringing prior to the police arrival, despite the fact that the victim had to come approximately 15 miles from his residence; on a prior occasion, when the police apprehended and prosecuted an offender for possession of stolen property following a break-in, being requested several times to appear in court with the requests generally being relayed only the night before his attendance was required and on all but one occasion that attendance proving unnecessary.

(b) *The courts*

When he was called to testity on that occasion, moreover, the case was dismissed when the trial judge concluded that the goods had not been specifically identified by the victim. The victim indicated that this rather upset him, but he did not appear to direct his upset to the trial judge.

> BILL: I know in my own mind that that was my merchandise, but the way he worked it he was right. I mean, that manufacturer might have made 400 dozens of that sweater. That fellow might have bought the sweater in the west end for all I know. Like the judge said, I can't be 100% certain that those were my goods.

VICTIM No. 2: Mike

Offence: Armed Robbery, April 26, 1973.

Interview date: August 8, 1973.

1. *The Offence*

Mike operates a corner milk store on a residential-commercial street. He has been robbed five times during the five-year period in which he has held this franchise, the last two robberies occurring within a two-week period in late April and early May of 1973. He was interviewed primarily in connection with the fourth robbery, it being one of the more recent and also one of the robberies in which the offenders had been apprehended, prosecuted and convicted.

On April 26, 1973 two men entered the store approximately ten minutes before the 11 p.m. closing time, inquired what time the store closed and moved around the store as if making casual purchases. Mike recalled seeing the men in the store on three or four prior occasions in the week preceding the robbery and was accordingly not apprehensive about their presence just before the store closed. While Mike busied himself with his preparations for closing, one of the men moved around the counter and placed what appeared to be a gun wrapped in newspaper against his back, advising him that it was a hold-up. The other man then moved in brandishing a Hire's Root Beer bottle and instructed Mike to open the cash register.

> MIKE: The time I was robbed when the guy just put the thing on my back I was more scared of the bottle of pop 'cause I don't know if they're going to take my money and give it to me over the head—I didn't mind the shot 'cause that would kill me. The thing was I didn't see what was on my back, but I saw the bottle and I thought they're going to kill you, but they're going to go ahead and hit you on the head with the bottle and you think that's how the thing will be over.

After collecting the money from the cash register, the robbers pulled the telephone from the wall and made their escape—to be captured by the police approximately 15 minutes later.

The corner milk store operation is almost necessarily a high-risk target for armed robberies. The economics of the franchise arrangement (a fixed income of approximately $600.00 per month, plus 1% of the gross receipts) militate against the proprietor hiring additional help, either to take the day's receipts to the bank or to deter prospective robbers by their presence. As a result, a robbery executed just before closing time can almost be guaranteed a take of between $600.00 and $900.00. The folklore among milk store operators appears to be that their vulnerability varies inversely with the number of store personnel present. That is, it is said to require two robbers to rob a single store manager, one to isolate the manager and one to collect the money from the till; if the manager were accompanied by an employee, the robbery would require three men, etc., so that the robbers would be assured of outnumbering their victims by at least a margin of one; as the number of milk store personnel increases, it becomes correspondingly less likely that a sufficient number of men can be mobilized to execute the robbery.

MIKE: I had about two years and it was quiet, and now in two or three weeks I have the two robberies. The thing is, I'm by myself in the store all the time. That makes it easier, you know, to rob me. They know I'm by myself all day and night so that's easier. Most of the stores, they have two guys.

INTERVIEWER: How is it you never have any help?

MIKE: I don't need it, I guess, I don't need help. I don't need someone to help me, just to protect me.

Although he is reluctant to protect himself by engaging an employee for the critical three-hour period between eight and eleven p.m., he did insist after the fourth robbery that the company install what appears to be a videotape camera of the type used for closed circuit security purposes. It is not, however, a functioning unit, except that if it were plugged in (which it was not) it could be made to pan from left to right to give the impression of taking in the whole store.

The victim attributes his liability to robbery to factors inherent in the nature of his business operation rather than to characteristics peculiar to the neighbourhood within which he operates. Because the economics of the situation virtually dictate a solo operation, he believes that robbers come from outside the community to execute their robberies in a relatively safe and productive environment.

During the course of the interview, the subject appeared generally relaxed, except when describing the personal effects of the series of robberies. In these discussions, he became extremely agitated, his voice quavered and he appeared on occasion to be on the verge of tears in describing how apprehensive he had become about operating the store on his own, especially during the three hours prior to closing.

MIKE: Well, I'm frightened many times you know, about the job. I couldn't stand it and I'm not sure I'm going to stay. You see, I'm scared for

everybody. If somebody comes behind my counter to look for something I get frightened . . . I get more tired of the three hours at night than for the 11 hours in the morning, more tired, from those last three hours, 'cause I'm scared and I try most of the time to keep myself in the back, near the freezer. I don't like to stand behind the counter . . . I like to leave the door [pointing to the rear door] open a ways sometimes so I could run out. It's funny, you know, it can be—and I'm sick, I'm upset after someone would rob me. . . . It makes me nervous. You see, I was happy in my job, you know. I liked it to work in my store, I like to talk to the customers. . . . Sometimes people, you know them, you don't want to be scared but still you are scared. Sometimes I am thinking to myself, there's nobody in the store now. Sometimes at night, I think who's going to come in now, you know, who's going to get in, you open the door and you know him.

Of the five occasions on which he had been robbed, the fourth robbery (April 26, 1973) was clearly the most unsettling, principally because he had been robbed by men who he believed to be *bona fide* customers. Whatever reservations he might previously have had about these two men had been allayed when their previous purchases in the preceding week passed without incident. He was now forced to acknowledge to himself that he could not distinguish between customers and robbers and that he could be robbed by almost anyone who came into his store.

MIKE: I never thought it when they robbed me then that night. They were people like me and you, dressed all right, you know, they don't look like bums or something, they didn't scare me the first time I saw them come in, they just look like regular customers. That thing makes me—now I'm scared for everybody.

2. *Contact with the Criminal Process*

(a) *The police*

The police have quite a creditable record in connection with robberies of this particular milk store, having apprehended the persons responsible in three of the five cases. Although demonstrably satisfied with police performance with reference to the robberies, Mike nevertheless rather resented their responses to his requests for assistance in shoplifting matters.

MIKE: Like I was saying now, if you get a guy who is shoplifting, you call the police, they come here, they get the name—and you have the guy and they still want you to go to court, you know, to lose all your day. I think that's the police, they should have the guy right away in court. Why don't they do it? . . . They get paid for all this, you know, sending a guy to court . . . But I see them and they ask me, do you want to go to court with that guy, and I say, no, it doesn't matter, so they let him go. . . . You have nothing about it for 50 cents, to go to court, the police should go—that's how they do it in my country [Greece].

It would appear, however, that Mike has reconciled himself to the need to handle shoplifting problems on his own. As he became known in the community, moreover, the incidence of petty theft seems to have diminished.

MIKE: I used to catch them all the time, but not lately. I have known—people have known me after so many years, you know, and now I know who to watch, so I have no more problems there. Just—they know me, some kids know me, and they don't try nothing.

(b) *The courts*

Although arrests were made in three of the five robberies, it was necessary for Mike to attend in court on only one of those prosecutions, in connection with a robbery by a young American and two Canadian high school students. His contact with the courts is accordingly limited to that particular occurrence, which he understands to have been perpetrated largely on the initiative of the American youth, with the high school students being paid a nominal $10.00 for their efforts.

> MIKE: Well, I didn't like the routine there, the time they say these are good boys, they're doing real well in school. And it doesn't mean nothing, it doesn't matter how they rob the store, how they did it to me . . . I don't like it, because I was down, eh, his father, his mother, he know I was the guy he rob, they didn't come to me and say, oh, how are you or something. I think they were mad at me, too. I think if there was a guy, you know, thinks about it, he would ask me a few things— it have nothing to do with his father, you know, I thought they would have done something, but they go by me many times and look at me . . .
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> INTERVIEWER: Did you try to approach them at all?
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> MIKE: Why should I? But they should have in my opinion, you know, 'cause they should have said sorry to me what's happening, you know, because for me was a big thing, and I don't think they're good people. If you are in my position and they're good guys then you're not happy put them in for two or three years. If it was my kid did something, going to steal something, I'm going to tell the guy sorry.

Mike's comments with respect to the judicial process reveal one of its most notable shortcomings, namely, that the victim is isolated by a sense of his own irrelevance. It was Mike's impression that an inordinate amount of attention was devoted to concerns peculiar to the offenders, to the virtual exclusion of concerns relevant to the victim. The fact that the court was prepared to remand the matter for sentencing pending receipt of records of the boys' performance in school indicated to the victim that their school records were matters of some importance, to be taken into account in determining the appropriate sentence. By implication, however, no such importance was attributed to the emotional impact on the victim of a robbery with threats of violence, for no questions were directed to him which would indicate that this was a factor to be taken into account.

Mike's primary source of dissatisfaction with the judicial process appeared to be that the court did not seek and the defendants did not tender an unequivocal, visible and sincere acknowledgement of responsibility for the offence and its consequences. The fact that the parents were not prepared to tender the apology to which Mike felt entitled, and, indeed, their hostility toward him for invoking the criminal process against their sons, were construed as an abdication of responsibility on the part of the parents. It appeared largely this attitude which prompted Mike's occasional punitive

comments, for he was convinced that "good people" would feel compelled to apologize, in which event "if you're in my position and they're good guys, then you're not happy put them in for two or three years".

It is the same theme of personal responsibility that appears to account for Mike's attitudes to bail and parole. He felt that these procedures were roughly equivalent, both representing sanctions for a dilution of responsibility for criminal conduct, encouraging offenders to believe that their activities would be treated with less than appropriate severity. The victim also saw further signs of the court's inclination to reduce the level of responsibility in a judicial etiquette which required the equation of "first prosecution" with "first offence". His experience had demonstrated to his satisfaction that there was no correlation between prosecutions and offences, and it seemed to him as peculiar hypocrisy for the court to pretend otherwise in its sentencing ritual.

In balance, it appears clear that Mike was remarkably leniently disposed to the offenders, or in any event, to the two high school students, for he believed that their participation in the robbery came as a consequence of the initiative and persuasion of the American youth. It is also significant that he professed himself satisfied with a penalty of two years' imprisonment for the offence of armed robbery for the other, presumably more responsible, offenders prosecuted in connection with his milk store operation.

Implicit within Mike's distinction between offenders in terms of their responsibility and the penalties appropriate to that responsibility is an appreciation that considerations peculiar to the offenders are relevant for sentencing purposes. He did not feel, however, that these considerations were entitled to exclusive attention, and asked only that the terms of reference extend to his own concerns as a milk store operator with a high degree of occupational vulnerability to robbery.

Victim No. 3: Romeo

Offence: Breaking and Entering (commercial), April 10, 1972.

Interview date: May 9, 1973.

1. *The Offence*

The victims in this instance were a second-generation Italian couple who operated a fruit and vegetable store. During the course of the interview, it appeared that the wife tended to dominate the household. She appeared quite articulate, strongly opinionated and somewhat inclined to exaggeration. Her husband, on the other hand, lacked her language skills but accepted the substance of her observations, interrupting only when he felt that she had gone beyond the usual overstatement of her position. Their contact with criminal activity breaks down into three main categories: (1) break-ins and

petty thefts by delivery boys and local children at the family store; (2) vandalism and petty theft by neighbourhood children at the family residence; (3) break-ins at Mr. Romeo's parents' house.

They were interviewed primarily in connection with an April 10, 1972 break-in at their store—a break-in subsequently found to have been committed by one of their former delivery boys. The offender had not been in their employ at the time of the offence, but had been discharged several months earlier for marking up the amounts on C.O.D. order slips and pocketing the difference. The Romeos' store had not been singled out by reason of the offender's prior employment in the store; theirs was but one of fourteen businesses on the Danforth entered by the offender and his 5 companions. Entry was effected by breaking a rear window in the store, netting approximately $5.00 in loose change. The premises were not otherwise disturbed, although several of the other break-ins had been accompanied by a rather extensive amount of vandalism (the contents of lawyers' and dentists' filing cabinets being strewn about, etc.). The offenders were apprehended several months later with the only adult offender of the group (aged 16 years) pleading guilty to eight of 14 counts of breaking and entering and given a suspended sentence of two years.

Over the period of time the Romeos have operated the store (17 years), there have been a number of break-ins, together with a predictable amount of shoplifting and petty thefts by local children and delivery boys employed in the store. To the best of the Romeo's knowledge, offenders were apprehended on only one other occasion. In that instance one of their delivery boys and a companion broke into the store on three or four consecutive evenings and stole the loose change left on the premises overnight, amounting in total to approximately $40.00. They were apprehended when Mr. Romeo suspecting that someone in the store was responsible kept the store under surveillance after closing hours and observed the boys enter the store through an unlocked basement window. The police were then called to apprehend the offenders. Whether at the suggestion of the police or Mr. Romeo, arrangements were made to reimburse him for his losses. Only one of the boys in fact delivered his share of the compensation and the Romeos heard nothing thereafter about the boys' disposition at the hands of the police. It is perhaps of some interest to note, however, that the same delivery boy who had been apprehended for the theft contacted Mr. Romeo approximately six months later to inquire whether he was forgiven (he having been the only one to make restitution), and upon being told that he was, requested permission to work for them again as a delivery boy. Although he was advised that another boy had since been engaged and that there was accordingly no position open, it is clear that he would not under any circumstances have been re-hired.

As mentioned, Mr. and Mrs. Romeo have also to contend with shoplftings by neighbourhood children at the grocery store and minor acts of

vandalism and petty theft at the family home. There would appear to be some conflict of opinion between husband and wife as to the response appropriate to such offences. They both profess to be motivated by a desire firstly to regulate the child's conduct, almost in the manner of a parent, and secondly to protect themselves from further depredation by that particular child. The primary motivation in their response, in other words, is their concern for the interests of the child apprehended. They differ, however, on whether the police should be called to reinforce their warnings or cautions to the child. Thus, Mr. Romeo is inclined to caution the child, believing that little is to be gained by calling the police, and, moreover, that everyone is entitled to a second chance. His wife, on the other hand, is more likely to demand that the child go home and return with enough money to pay for the article stolen or damaged; if the child's age or demeanor suggests it, she will also phone the police, less with a view to invoking the criminal process against the child than to employing the authoritative stature of the police to impress upon the juveniles the potentially serious ramifications of their conduct.

> Mrs. Romeo: And as a matter of fact, I think this is another place where my husband and I would disagree. If he had been in the store [when his wife discovered the April 10, 1972 breaking & entering], ten to one he wouldn't have called the police. He would say, well, why bother? Fix the window and forget it, whereas I'm the opposite. I figure there just might be something and where he thinks that—let the kid off and give him a second chance, regardless of his age, I don't think that's right. I think they should at least be frightened so they'll think twice before—especially the younger kids. Now, maybe when they get to be sixteen, some of them are hardened criminals as far as I'm concerned. But youngsters, I really think that if you threaten to call the police—if you don't, if you give them a second chance—I think you should do what you threaten to a child.
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> * * * * *
>
> Mrs. Romeo: At our store, if a kid six years old steals an apple, my husband says, why did you steal that apple? He'll go out and find them around the corner and he'll say, why did you steal that apple, as sweet as honey. And the kid'll say, well, I was hungry and I felt like eating it, and my husband'll say, well, don't you steal anymore because it's not right. Me, I'm hard. I say, look, you just get home and get ten cents and get it back here or, boy, you're in real trouble. In other words, I don't care if they ever bring it back, but I like them to think that this is what's going to happen, just all kinds of dire things. I figure the next time they pass, they'll be thinking, oh, I better not steal anything and it's a good lesson . . . I mean I wouldn't want to hurt little kids, but I don't think they learned anything at home, but I think they're going to learn something from me.
>
> * * * * *
>
> Mrs. Romeo: [When advised that the sentence given to the adult offender in the April 10, 1972 break-in had been one of eighteen months, suspended on pleading guilty to eight of fourteen counts]: What good is it going to do them anyway, even if they're in there a year or two

years? They're only going to get worse when they come out. I can't be hard on the kids, even if they do steal. I still say that there's lot of good in them somewhere down the line, if they're taught. Everyone is entitled to a mistake.

INTERVIEWER: What would have been an appropriate disposition in this case?

MR. ROMEO: I really don't know. Like I say, you're talking to the wrong man. I'm chicken-hearted, that's all.

INTERVIEWER: You can't be too chicken-hearted if, as your wife has suggested, you phoned the police when the boys were in your store, because you were afraid you might do them some harm [a reference to a previous break-in].

MR. ROMEO: Yes, I did phone the police that time, but the only reason I did that was to straighten out the boys, through his people. In other words, I had the same break. If my kids got into trouble, I wish their father would phone me and I would straighten it out for them. But I didn't lay no charge against them, not that I can remember . . .

INTERVIEWER: Were you asked whether you wanted to lay a charge?

MR. ROMEO: No, I just said that I want my money back.

INTERVIEWER: Did you indicate to the police that you weren't interested in laying a charge, or were you leaving it up to them to make that decision?

MR. ROMEO: No I was leaving it up to them to make their decision. As far as I was concerned, I just wanted their people to know, which I don't think their people did know about these boys. In other words, they were probably good kids just like this kid here [pointing to his own eleven year old boy]. He might be out another year from now stealing something and I won't know, but I wish someone would tell me, and I would get it all straightened out.

2. *Contact with the Criminal Process*

(a) *The police*

Because the criminal activity to which the Romeos had been exposed was notable primarily for its nuisance value, they felt more annoyed than threatened by the aftermath of criminal victimization. Their experience had demonstrated that their primary risks were neighbourhood youth and they were accordingly inclined to view their victimization as a product of inadequate parental control over the activities of their children—an inevitable consequence of the difficulties involved in raising children. As a result, their expectations of the police were largely defined by their usefulness in limiting the consequences of normal patterns of juvenile behaviour. The usefulness lay primarily in bringing the children's delinquencies to the attention of their parents, hoping thereby to contain the misconduct and, if possible, provide an opportunity for an agreement for restitution.

It is similarly within these expectations that the Romeos' principle sources of dissatisfaction were found.

MRS. ROMEO: It's the fact that I went to the trouble because I wanted these boys to be taught a lesson, not because I wanted them to go to Jail. I wanted them to know that they couldn't get away with this sort of

thing, that there are people that won't put up with it and there are laws to protect people who won't put up with it. And, I mean, I might as well have stayed in the house and said help yourself, you know. In other words, why go to the trouble of trying to protect anything unless you're going to be made aware of what's going on after the fact.

The Romeos were thus resentful that the police tended not to inform them of the outcome of their requests for police intervention—either to advise them of disposition proposed for the juveniles apprehended or, more important, to provide information to the complainants which would permit them to assess the propriety of the disposition proposed. They were, moreover, annoyed that the responsibility for changing decisions appeared to have been appropriated by the police, particularly because they believed themselves entitled to use the police to buttress their ultimatums to the offenders and their parents: pay for the item damaged or stolen or face the consequences of prosecution.

MRS. ROMEO: Nothing, nothing has ever happened with anything that I ever knew. That's what I'm trying to tell you. This is the only time that we have ever been called that they have ever been able to do anything that we knew of, or that they even caught the person. Except this Rocco, I knew that we knew who that was. But many times that store's been broken into, and the whole area, like, but I don't believe that they've ever let us know that they've ever caught anybody. I always thought they didn't catch anybody, and that's why they never ever called back, and I believe this now.

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MRS. ROMEO: [In connection with police assistance when young boy apprehended by Mrs. Romeo attempting to steal Christmas lights from family home] And when you go to the trouble—as I say you're taking quite a chance out there, chasing these guys. You don't know who they are or what they've got on them or how old they are or anything in the dark. And then the police come and they say the juvenile authorities will look after them, etc., etc., and the father comes, and he could care less, really and you don't even get a phone call so much as to say, well, I know who the four boys are, etc., etc., etc., and then—nothing, absolutely nothing and this really makes me mad, it really does. If I went to the trouble of informing them, why can't they go to the trouble of informing me. I asked the officer to have the children investigated and let me know what kind of children they were. In other words, I probably might have been able to do some good if one was fourteen years old, and the other kid was ten. Well, what's a ten year old doing out at 10:30 at night with a fourteen year old in the first place. And I mean, I'm no judge; I can't assume anything, eh. I don't want to, but I figure the least they could have done—I don't say they should have dropped all their big charges or what have you and rushed out and looked afted my little case, but I think eventually somebody should have gone and at least have advised their parents that they had been caught stealing the lights, and made their parents aware. I'd be furious if my kid did it and the police didn't tell me.

MRS. ROMEOS [When asked what it was that led her to believe that the police had not advised the parents in this particular case] Well, for one thing, why didn't I get the chance whether I wanted to press

charges against those boys or not? It was my privilege, wasn't it. I caught them. You mean to tell me I couldn't go down and put a charge of theft against those boys, and I was discouraged from doing that by the police officer. He said that it wouldn't be a case of that, which I knew he was wrong but I didn't care that much anyway. . . . You see, to me, the whole thing wasn't handled right. I think the police should have told him, if you don't want to have charges pressed against you of theft, you pay the money back and you've got so long to do it or [Mr. Romeo] signs that you're charged with theft. In other words, encourage my husband to have this boy charged with theft if he didn't pay the money back. Never mind the parents—these foreign people can cry and carry on like silly maniacs, but in the meantime—I don't say they don't feel things, but if they couldn't handle him, make the boy pay the money back. In other words, he has to get a job, and he has to pay it back systematically so much a week out of what he earns. And, to me, he would have learned something. But, to me, the way he was handled, he didn't learn anything, except that he, because he was young, he could get away with things.

INTERVIEWER: [Note that Rocco was apparently aged 15] Were charges laid?

MRS. ROMEO: Oh, I don't think they were. I'm perfectly convinced they weren't because he didn't plead guilty to it and if they would have laid charges, we would have had to go down and say, eh? I was never satisfied about that.

Despite these reservations about police performance, the Romeos expressed themselves to be generally in sympathy with the police and appreciative of the difficulties of law enforcement. Mrs. Romeo, in particular, felt compelled to remind herself of the need to distinguish the police from the laws and constraints within which they perform their responsibilities.

MRS. ROMEO: I figure, you know, I kind of take my spite, we'll say, out on the police, but actually if you even carried it back—like say, this boy, he was caught going into fourteen places and convicted on eight and he ends up walking free, and it didn't cost him anything. What did he actually give up? A little bit of embarrassment by being caught. So, if, you say, well, there's something wrong. I don't really blame the police, but you have a tendency to say in your mind, like, what's the use, like my husband does, don't bother with it, it isn't worth it. But that's the law, really, isn't it? You've got to separate the law from the police, but you don't; you just don't stop and think. That's what my husband feels, why bother calling the police because the kid's not—whoever it is is going to get away with it anyways, why go to all this trouble, and he would think, the police don't do anything, but that's what I'm saying. It probably isn't the police, it's the law as such, the way it's written. It isn't really their fault.

(b) *The courts*

Because, with one or two exceptions, no request for police intervention has culminated in prosecution, and because the prosecutions that did occur were conducted exclusively on police initiative, the Romeos have had no direct experience with the courts. It did not appear, however, that it was this lack of direct contact which accounted for their reluctance to comment

on the propriety of the sentence given to the sixteen-year old youth apprehended for the April 10, 1972 break-in (eighteen months suspended sentence on pleading guilty to eight of fourteen break-ins, with the balance withdrawn at the request of the Crown, the Romeos had not been advised of the outcome and received this information for the first time during the course of the interview). After several attempts to elicit a response to the disposition, it emerged that their reticence derived from the same source as their criticism of the police, namely, that they had not been permitted access to information which would have enabled them to make an informed judgement.

MRS. ROMEO: [In response to question as to what would have been an appropriate punishment for a 16 year old youth involved in a systematic series of fourteen break-ins of commercial concerns in the area, with varying amounts of apparently malicious damage in the businesses entered] Well, like I say, I think it depends—this is what I don't understand. I think that the victim should be made aware of the circumstances, without frills, of the people. In other words, if somebody robbed me, I wouldn't care if it was a hundred dollars, two dollars or what it was, if that kid's mother was having an operation, and he didn't have the money, and the father was dead, I think this warrants special attention, but if the parents have had trouble with him and they have been really working hard, trying to bring this kid up right, and this and that and the other, and the parents say, well, I've had it, there's nothing I can do to help this boy anymore, he won't listen. Now, I think if the victim knew that, they would press charges enough so maybe that boy would go to jail. But there again, you see, maybe if he goes to jail he'll learn more than he knew before he ever went there. I don't know. So maybe this is why the law is written like it is, hoping that if they put on a suspended sentence, this boy here, Raethorn or whatever his name is, he won't have met all these other types and therefore he's better off. I don't know. Is that the reason they do it?

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MRS. ROMEO: I think if you investigated all kinds of this, you'd find that the victim never knows what happened to the people involved, unless it was a case of manslaughter or something where there's going to be a trial by judge and jury, and what have you, and it's in the papers. But we're really not talking about that, we're talking about small offences, aren't we? I know my ideas would definitely alter in different cases. I know they would, depending on the circumstances, and this is it: you never get a chance to weigh anything yourself, you can't just say, well, I want to press charges, or I don't. You don't really know what to do because you are never advised about the circumstances.

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MR. ROMEO: [When advised that the sentence received by Raethorn had been one of 18 months, suspended, on pleading guilty to eight of fourteen offences] What good is it going to do them anyway, even if they're in they're in there a year or two years. They're only going to get worse when they come out. I can't be hard on the kids, even if they do steal, I still say that there's a lot of good in them some-

where down the line, if they're taught. Everyone is entitled to a mistake. But these chaps have had two or three mistakes, haven't they?

INTERVIEWER: What would have been an appropriate disposition in this case?

MR. ROMEO: I really don't know. Like I say, you're talking to the wrong man. I'm chicken-hearted, that's all.

In this instance, the Romeos' direct experience led them to perceive the "typical" crime as one involving neighbourhood children or delivery boys employed at the store. Accordingly, theirs was not a punitive or retributive attitude to delinquency and the consequences appropriate to it. Rather, they saw such activity more as a problem to be managed by the combined efforts of parents, police *and* victims. They appeared to appreciate that theirs was necessarily a continuing vulnerability, for depredation by neighbourhood children and employees was an ineradicable feature of their residential and occupational environment.

It is interesting to compare these attitudes to those elicited from Mrs. Romeo in connection with her attendance as a witness at a manslaughter trial (having previously, at the request of the police, identified the body of her cousin, killed by her common-law husband of five years during the last of a series of drunken assaults). Apart from the repertoire of anecdotes Mrs. Romeo derived from the trial (e.g., witnesses, despite injunctions to the contrary, pooling their evidence in the isolation of the witness room), the experience also offers insights into the attitudes to more serious crimes, and more importantly, to crimes in which she is not herself directly involved but can see herself as a symbolic victim.

Although Mrs. Romeo knew her cousin only vaguely and, indeed, was anxious to dissociate herself from her because of her "poor reputation", she believed the death to have been the almost inevitable result of a series of brutal assaults over the history of the relationship. When the offender was convicted and sentenced to ten years imprisonment, Mrs. Romeo felt satisfied that he had been appropriately punished. She was upset, however, that this sentence might possibly be mitigated by parole, believing that this particular offender was manifestly not entitled to such relief because of his demonstrated propensity for violent assaults. On the other hand, she was quick to explain that if she herself were killed by her husband in an atypical fit of rage, it would be most unfair if he were to be given an equivalent penalty.

MRS. ROMEO: [When asked what she thought about parole as such] I think maybe in a lot of cases it's good, but if I can bring this out—if my husband and I, all of a sudden, he came home drunk—he doesn't even drink. But if he came home drunk—he's never abused me, I've lived with him for years, and he come home drunk and he beat me up for some unknown reasons, but something he got in his stupid head this one particular time, and he had to get even, and he had no intention of killing me but he was trying to get even and he whacked me all over the place, and I died as a result of it. To me,

> he should not get the same treatment—if he even went to jail it would be terrible because he didn't mean to kill me and he wasn't over a period of time beating me and abusing me. It was a one-shot effort, he went crazy one night and lost his head, sort of thing. He shouldn't be punished the same way as someone who, over a period of time, was doing the same thing repeatedly, repeatedly, the police are called all the time, and bothered all the time, and the neighbours are bothered all the time. This to me is different than somebody who does one thing once in a fit of temper or a fit of jealousy or a fit of anything. I can understand. I think anybody can lose control at one time if their circumstances are just the way they are. This is what I was saying about kids. You can't treat everything the same. Everything's got to be treated on its own. And this man to me didn't get enough [because he will be out on parole in 3½ years].

Her distinction between the two cases is significant for two reasons: (1) it reaffirms her previous indications that the severity of the sentence should depend as much, if not more, on the offender as on his offence; and (2) it suggests that if opportunities were made available for relaying to the victim an expanded appreciation of the offender's characteristics, victims (both real and symbolic) would be less punitively-inclined than conventional wisdom might suggest.

NOTES

[1]The outlines of this type of criminal conflict emerged during the course of the fieldwork undertaken by Debbie Tannenbaum for her paper, "People with Problems: Help-Seeking in East York" (included in this volume). The phenomenon was examined more closely in a series of intensive interviews conducted by the writer with various of the clients of the criminal process, victims, offenders and witnesses (to be published separately by the Law Reform Commission as *Client Perceptions of the Criminal Process*).

[2]For their assistance in the collection and presentation of the East York Community Law Reform Project data, I am grateful to Marianne Packer, who compiled the occurrence reports from patrol division 5411 between May 15, 1972 and May 14, 1973; Mark Krasnick, Rosann Greenspan, Kathryn Barnard and David Price, who helped organize the occurrences for analysis by computer; and Marvin Ross, who submitted the data to computer analysis and, with Keith Jobson, assisted in the presentation of the results.

[3]"Family" is defined as a nuclear unit comprising husband and wife and children; "other friends and relatives" comprises pre-existing relationships in which the parties are associated within social networks or within extended familes, such as cousins, etc.; "neighbours" includes all persons living within a two-block radius of each other, whether known to each other or not (although weaker than the other relationship categories, such geographic proximity does imply some potential for reciprocity or interdependence and the social relations incidental thereto); "commercial" comprises relationships between employer and employee, shop-keeper and customer, public transit system and passenger, etc. where the relationship pre-existed the criminal event.

Conflict and the Uses of Adjudication

Prepared by

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1. *The Adjudicative Ideal*

Primitive dispute resolution involved at least two processes, reciprocal accommodation through customary law[1] and reciprocal attempts at determination through force. Although contemporary conflict resolution involves the same basic elements, the processes of resolution have been formalized: a large part of the customary law has been transformed into legislation and regulation, and the state has acquired a monopoly of authority over the exercise of force. The appropriation from the original actors, their kin and kadis[2], of the jurisdiction to regulate conflict resolution entailed the development of mechanisms for participant involvement suited to the reality of the new locus of ultimate authority.

One such development (and the one with which we are here principally concerned) was that of adjudication. Fuller described the emergence of adjudication as one of the features of the transition from "a condition of anarchy to despotism toward something deserving the name of the rule of law."[3] Ideally, adjudication is described as a mechanism which accords to members of the community a formal opportunity for participation in their social ordering.[4] It provides an institutionally guaranteed construct of procedures through which a party may participate in determinations which affect his interests by presenting proofs and arguments to an impartial arbiter for a decision in his favor.

The obligation of impartiality dictates that the arbiter be so located in institutional terms that his position will not be affected by the outcome of individual cases. In his efforts to effect a determination of the disputes presented to him, he is obliged to be independent both of the need for direct alliance with one or the other of the disputants and of the opportunity to enhance his own social position by his determination. Only thus is it possible to immunize the arbiter from the need for partisan alliances and the compromising effect such alliances would have upon his unique moral position. The arbiter is accordingly required to be detached, morally, emotionally, and financially from the matrix of the dispute if his decision is to be accepted as conclusive.

The essence of adjudication, however, resides less in the office of the arbiter or judge than in the procedures by which the participants are guaranteed an opportunity to affect the outcome. The adjudicative mechanism is predominantly characterized by the procedural restraints imposed on the arbiter, obliging him to be both passive and impartial. Thus, the proofs and arguments must be presented to him by the participants or their representatives: he is not to seek them out on his own initiative. As a consequence, an

adversarial component becomes an integral feature of the machinery of adjudication, for if the arbiter is to be restrained from initiating investigations into disputes, some alternative technique must be introduced to perform that function.

The constitution of the adjudicative mechanism, with its requirement that the arbiter be professionally detached from the problem and its outcome and that the issue be presented within a construct of adversarial procedures, predicates an inherent institutional need for conflict maintenance.[5] The adjudicative system is structured to employ the conflict which inheres in a given problem unit, channelling it through an adversarial framework in the expectation that it will act to define the issues into a formula amenable to the application of adjudicative solutions. Because the mechanism is designed to exploit only the conflict factor, the relatively greater emphasis on discord tends to submerge any corresponding potential for harmony which might subsist in the problem presented for assessment. The parties are thus encouraged to present their proofs and arguments as forcefully as possible, and because it is procedurally irrelevant, to ignore the potential for accommodation.

The virtue of the adversarial component is that it operates to polarize the disputants' positions and thereby facilitates identification of the issues or conflict factors in a form suitable for adjudicative solutions. Its deficiency, however, is that its structural dependency on conflict maintenance, albeit necessary to reformulate the problem for adjudicative purposes, converts the problem unit into one which is defined exclusively in terms of conflict.

It is in large part this need to redefine problems in terms of their contribution to the conflict ethic which makes adjudication an inadequate medium for resolution of the types of conflict peculiar to pre-existing relationships.

Where the association which precedes the conflict is casual, brief, or otherwise of relatively uncomplicated proportions—or, indeed, where the conflict itself constitutes and circumscribes the prior association—adjudication represents an appropriate mechanism for conflict resolution. In most such instances there will be no substantial differential in perceptions of the problem between litigants and arbiter when it is submitted to redefinition in terms of its contribution to the conflict ethic. An interaction between strangers, as for example, an assault committed by an offender with no prior connection to the victim, in which the conflict or assault represents the extent of the association, presents an ideal opportunity for adjudication. The event is amenable to definition exclusively in terms of conflict and the normative criteria available to the adjudicative apparatus can be applied directly to a factual base mutually perceived by actors and arbiter alike. The adjudicative mechanism is in fact best equipped for the social task of assessing the propriety of conduct on an impersonal, act-oriented basis.[6] It is acts, not

persons or their relationships to one another, that are declared proper or improper under the relevant provisions of the law.

Where, however, the conflict is in fact generated by a prior association with a history of psychological, emotional and legal nexus between the participants, such problems are not easily accommodated to resolution through adjudication. An assault committed by a husband upon a wife, for example, may provide an opportunity for adjudicative intervention, but the mechanism is designed to interpret only the conflict and accordingly cannot locate the assault in any meaningful way in the context of the relationship—a relationship characterized by an intricate and reciprocating balance of psychological, emotional and legal connections. The same structural characteristics which equip adjudication for determinations as to the propriety of conduct on an impersonal, act-oriented basis limit, if not preclude, its utility for relationship-oriented social ordering.

The adjudicative structures are not designed, in other words, for the resolution of what Fuller has termed "polycentric" problems, i.e., problems in which the constituent elements are so related as to be reciprocally interacting, with a determination of one facet of the problem reordering the balance and alignment of the others.[7] Continuing relationships tend to generate polycentric or multi-dimensional problems; and, indeed, such conflict is as much a characteristic of relationships as harmony, for it is the shifting ratio of one to the other which defines the relationship.[8]

Although the assaults mentioned in the preceding examples, one between strangers and the other between husband and wife, are sufficiently similar to permit an adjudicative intervention, they are so markedly different in terms of their sources that only the former will permit an adjudicative resolution. Different sources of conflict may require a different type of mechanism for their resolution. As the source of conflict moves from a context of casual, brief or otherwise uncomplicated associations to a context of bilateral monopoly relationships, the contribution of adjudication to conflict resolution becomes correspondingly less productive.

2. *Conflict Abstraction in the Criminal Process*

Adjudication is presently the only forum recognized as legitimate for resolution of conflict which permits of a criminal definition, whether the occurrence represents an armed robbery involving a victim and offender who are essentially strangers or a common assault between husband and wife. On a more generalized level, the adjudicative forum is made to serve as a mechanism for conflict resolution both in cases where the event constitutes and defines the relationship, i.e. criminal events involving strangers, and where the relationship generates the criminal event, an event grounded in and representing but one facet of that prior relationship.

Because the criminal process has extended to adjudication a virtually exclusive franchise for resolution of criminally-defined conflict, it becomes necessary to examine in some detail the processes by which the conflict potential is abstracted from a given problem unit and used to reformulate the problem into one amenable to the application of adjudicative solutions. This process of abstraction is central to an understanding of the role of conflict maintenance in the adjudicative mechanism.

(1) *Conflicts of Interests*

To assist in this understanding, it is helpful to employ Aubert's conceptual distinction between conflicts of interests and conflicts of values or beliefs.[9] The problems presented for adjudication may thus be characterized in either of two ways, depending upon the base of the conflict. In this context, conflict *per se* simply refers to a state of tension between two actors irrespective of its origins and the routes followed for its termination.

Conflict grounded upon competing interests may be said to derive from a situation of scarcity of power, authority or commodities: both actors seek a common value or commodity, the availability or supply of which is limited.[10] This type of conflict is perhaps best illustrated by the operation of the market economy, with the vendor anxious to command the best price possible for his goods and the purchaser anxious to acquire the goods as cheaply as possible. It is in the mutual interests of both parties that the conflict potential in such situations not be realized and that an agreement be reached through concessions in their respective positions. The agreement, however, will not derive from an adjustment of their ethical commitments to the price of the commodity, but rather from a shared interest in minimizing the likelihood of maximal loss on both sides. For the purchaser to decline to buy or the vendor to sell would represent an undesirable outcome from the point of view of both parties. They will therefore be prepared to negotiate a compromise in accordance with their respective preferences and interests under the given market conditions.

The significant characteristic of conflicts of interests is thus that they are soluble without resort to normative criteria. There need not, in other words, be an expansion of the conflict into competing moral or ethical commitments because there is a consensus on the intrinsic value of the object of the transaction. Each party to the transaction is encouraged to operate within his own value system according to his perception of his interests and to avoid conceptualizing his position in normative or ethical terms. A successful outcome in a situation of conflicting interests is thus not assessed in strictly competitive terms: it is not winning relative to one's adversary, but rather gaining relative to one's own value system.[11] Consequently, except in cases of pure conflict,[12] there will always be a possibility for resolution of the competing interests by negotiation, by accommodation, or by avoidance of mutually

damaging behaviour because the interests of the parties are not mutually exclusive.

It is this duality of harmony and discord, of common and competing interests, which creates the possibility of avoiding a mutually damaging outcome. The shifting ratio of consensus over the intrinsic value of the object and conflict over its cost or availability provides an opportunity for conducting the transaction in a way which minimizes damage. As Schelling observed, "Mutual dependence is part of the logical structure [of the conflict of interest situation] and demands some form of collaboration or mutual accommodation—tacit, if not explicit—even if only in the avoidance of mutual disaster."[13] The potential for accommodation is thus as important a dynamic as the element of conflict. It is for this reason that mechanisms which permit accommodation or negotiation are appropriate for resolution of disputes grounded in a conflict of interests.

(2) *Dissensus*

Competing interests do not necessarily entail any disagreement concerning facts or values. Indeed, as previously indicated, a conflict of interests predicates a consensus, at least on the intrinsic worth of the object of the competition. Although the area of consensus may be closely circumscribed, the fact that it subsists at all in any interest conflict is significant, for it provides the dynamic or motivating incentive for effecting a mutually satisfactory outcome through negotiation.

A conflict of values, on the other hand, is based upon a dissensus concerning the normative status or propriety of a social object or event, and is accordingly both more fundamental and less amenable to resolution through negotiation. Although the ideology of the market place discourages tendencies to interpret conflict as a matter of principle, guilt or responsibility, conflicts of interest in other contexts may evolve into a dissensus over values or dissensus over facts or both. This reformulation of the conflict will occur when the antagonists connect their interests with a system of ethical or moral precedents which is external to and transcends the value systems peculiar to the individual antagonists. When the conflict of interests is transformed into a dissensus over values, the conflict becomes more difficult to resolve by negotiation because the issue becomes one of individual responsibility with reference to an external value system. At the same time, however, this transformation from conflict to dissensus may open the dispute up to resolution through mediums other than negotiation. "To put it very simply: As long as a conflict of interest remains relatively pure [value-free, in this context], it is amenable to solutions through bargaining and compromise, on the condition that there is something to give and something to take on both sides. . . . When a clash of interests has become associated with a dissensus, bargaining and compromise may be harder to achieve, while the conflict has, on the other

hand, become amenable to a solution through the intervention of law in the broadest sense."[14]

Aubert went on to suggest that the transformation from conflict to dissensus could occur in two ways, either spontaneously, as an inevitable consequence of the escalation of the conflict, or alternatively, as a consequence of the structure of the conflict-solving mechanism.[15] If conflicts progress toward a solution, they may do so in one of two major ways: through bargaining and compromise, or through law and the application of norms to established facts. In a sense, the former conflict-solving mechanism presupposes that the conflict is handled as a conflict of interest, while the latter presupposes that it be handled as a dissensus over facts or norms, although the underlying opposition of interests may be fully recognized. Thus, there is a correspondence between the two sources of conflict and the two mechanisms for solution. This is not to say that the source of the conflict will fully determine the mechanism of solution, but it can be suggested that conflicts may be transformed when they pass from the stage of aggravation to the stage of solution, and this may often be dependent upon the availability and effectiveness of the existing apparatus for conflict resolution. If, as in the criminal context, the only mechanism is that of adjudication, a conflict of interest must necessarily be reformulated as a dissensus, a conflict of value or belief. It may well be that this transformation will have already occurred spontaneously, prior to the intervention of the adjudicative apparatus, thus making it insoluble through compromise. If the transformation has not already occurred, however, it must be effected before the parties can engage in effective litigation. In this sense, therefore, when a conflict of interest is presented for adjudication, the adversaries will be forced by the conflict-solving mechanism to formulate their opposing interests as a dissensus over facts or law or both.

3. *Adjudicative Structures and Normative Solutions*

Adjudication, as a mechanism for conflict resolution, is structurally equipped only for the application of normative solutions. The apparatus must necessarily function by producing normative conclusions on an impersonal, act-oriented basis. It is not designed to assess conflict in a causal-functional matrix and then proceed to resolve that conflict by removing the cause of the dissension, as, for example, a physician is able to identify the source or cause of disease and proceed to eliminate the malignancy. When the arbiter is recruited to impose order on a conflict of interest situation, he can of course identify the source of the conflict as being the limited availability of the object of the competition. The observation that the source of the conflict derives from a condition of scarcity of goods, power or authority, however, does not imply the solution for this scarcity makes for a certain immutability in the causes of interpersonal conflict. It is not within the power of the arbiter

to extend the availability of the sought-after commodity and he must therefore make a determination as to its distribution. He will accordingly be forced to abandon a process of determination which equates causes directly with solutions; that is, he must abandon attempts to remove the causes of conflict and search for a process which will permit him to make a determination as to the way in which the scarce commodity is to be distributed. This determination will thus involve a search for indices of entitlement which in turn entails a reconceptualization of the conflict according to the norms of distributive justice. For the arbiter to observe, for example, that both parties are competing for an object of limited availability and that one or the other of the parties has more of that limited commodity than his needs require is to arrive at a normative conclusion that that party is too greedy, too selfish or whatever. Whenever the arbiter looks for causes of interpersonal conflict he is likely to find acts which imply responsibility and lie open to evaluation in normative terms. The search for an adjudicative solution will therefore necessarily imply reference to a normative structure; accordingly, if the conflict has not been reconceptualized prior to its presentation to the adjudicative apparatus, this transformation must be effected to make the problem eligible for the application of normative solutions.

When a conflict of interests is tendered for adjudication, therefore, the conflict potential must be abstracted and transformed into a dissensus in order to accommodate the problem to the problem-solving mechanism—a mechanism designed to arrive at solutions only through manipulation or ordering on a normative, act-oriented basis. The consequence is that a clash of interests will thereafter be formulated as a disagreement concerning either certain facts in the past or concerning what norms to apply to the existing state of affairs, or both. Whether the solution harmonizes two contrasting sets of needs and plans for the future is no longer material. The problem has been objectivized and a solution can now be reached by an outsider who knows the rules of evidence and is able to perform logical manipulations within a normative structure. By comparing the available facts with the normative precedents, he can arrive at a verdict.

4. *Norm Definition and the Responsibilities of Social Control*

As indicated previously, the adjudicative apparatus is ideally characterized by (1) a construct of adversial procedures designed to redefine the issues into a formula amenable to adjudicative solutions, and (2) an impartial arbiter whose social position is independent of the outcome of any given determination. This second feature is designed to preclude the possibility of the arbiter making normative alliances with either of the participants, for to do so would jeopardize his status as an impartial third party. His unique moral position would be compromised if, although his interests differ from those of the disputants, he were in normative terms to become one in a subgroup

of two. The need for an institutional guarantee of impartiality therefore implicitly dictates that the normative structure be external to the private value systems of the individual litigants. In the criminal context this latter requirement is of course fulfilled by the criminal law, which provides a definitive value system with reference to which the arbiter can assign legal responsibility for conflict.

The deference to an external normative system, while necessary to protect the institutional status impartiality, also means that criminal adjudication will have something of a bifurcated responsibility; it has a responsibility to criminal litigants to operate as a forum for conflict resolution and a responsibility to itself as a social institution to maintain the primacy of its normative structures. In the course of fulfilling this latter responsibility, the function of conflict resolution is subordinated to the social task of maintaining conformity with the law.[16]

The responsibility to serve as a vehicle for norm definition and social control disposes the adjudicative apparatus to become differentiated from its explicit function as posited by Fuller, that of providing an opportunity for participation to those affected by social decisions. With the subordination of the function of conflict resolution comes a corresponding potential for subordination of the interests of the original participants. The extension of the universe of considerations to incorporate the institutional needs of the intervenor makes it a virtual certainty that the interests of the immediate litigants will be superceded by those of the intervenor,[17] at least to the extent that they are inconsistent with the intervenor's interests in maintaining the supremacy of its value system. The institutional premise appears to be that the public interest resides exclusively in maintaining conformity with the law —a premise which precludes the possibility that the public interest might be better served if, at least in the first instance, the participants were to be given an opportunity to arrive at an outcome within their own terms of relevance. In the result, not only must the disputants and their problem be defined in terms of a contribution to the conflict ethic, but that contribution will be determined by reference to considerations external to the conflict itself, namely, the responsibility vested in the adjudicative mechanism for the demonstration and reenforcement of societal norms.

It is at this point that criminal adjudication comes to resemble the so-called zero-sum game.[18] The original problem unit, whether a conflict of interests or a conflict of particularistic values, has been transformed into a normative dissensus. The value system within which responsibility is to be allocated, however, must necessarily be external to that of the disputants in order to protect the arbiter from the need for partisan alliances and thereby to assure his impartiality. The institutional pressures to maintain the hegemony of its value system immunize the normative structures to reshaping through efforts at negotiation or compromise by the antagonists. When the parties are

polarized into normative positions vis-à-vis an external, inflexible reference point, the potential for compromise is eliminated from the logical structure and assigned to the realm of the legally and procedurally irrelevant. When there is no scope for mutual accommodation, no common interest even in avoiding mutual disaster, the interests of the parties cease to be reciprocally dependent; indeed, they have been rendered mutually exclusive. Gains are thus no longer secured relative to one's own value system, but rather relative to a fixed, external value structure. A gain by one party is accordingly a direct loss to his opponent and the interaction qualifies as a zero-sum game.

This is not to suggest that zero-sum games have no place in the process of conflict resolution. Where the conflict derives from and constitutes the extent of the nexus—legal, moral, ethical and psychic—between the actors, the adjudicative process of conflict abstraction will produce a relatively consistent perception of the interaction, common to all participants, complainant, defendant and intervenor alike. In most such situations, the victim's sole interest lies in having a value recognized or restored to him, whether his physical integrity or property. The offender may either acknowledge or deny the claim, but in either event will do so within the same or equivalent terms of relevance. In other words, adjudication is perfectly suited to the resolution or determination of conflict between strangers. Where, however, the conflict derives from and represents but one facet of a continuing association, this process of abstraction creates a substantial differential in perceptions of the interaction as between complainant, defendant and intervenor. Here, the structural dependency on conflict maintenance and abstraction to create a problem amenable to normative, zero-sum solution operates to objectivize the relationship, to submerge the potential for harmony, to make reciprocity and interdependence irrelevant, and to render the parties professional strangers.

5. *Victims and Offenders: Normative Careers in the Criminal Process*

To this point, it has been suggested that problems tendered for adjudication must first be subjected to a process of abstraction to accommodate the problem to the problem-solving mechanism. This process of abstraction operates initially to exploit the conflict potential in the problem unit and secondly to reformulate conflicts of interests or conflicts of facts or values (if the transformation should occur spontaneously prior to the adjudicative intervention) into a normative dissensus with reference to a relatively fixed and necessarily external value system. The institutional pressures to maintain the integrity of its normative structures, however, create a potential for subordination of the interests of the litigants in resolution of their dispute to the larger social interests of the adjudicative mechanism itself. As a consequence, the litigants and their interests will be redefined in terms consistent with their representative utility for fulfilling the institutional responsibilities of demonstration and re-enforcement of societal norms.

(1) *The Normative Career of the Victim*

A redefinition of the complainant or victim is thus effected by recognizing and supporting only those of his interests which are consistent with the value system administered by the adjudicative apparatus. This differential recognition of interests was an historical consequence of the evolution of the concept of crime. Whereas crime had previously been understood as a violation of the victim's interests, it came to be interpreted as a social disturbance and a threat to the state interest in maintaining order.[19] With the institutionalization of the processes of conflict resolution, the victim was correspondingly relieved of both the responsibility and the right to seek redress through his own initiatives, whether by accommodation through customary law or by attempts at determination through force. As the responsibility for criminal justice was appropriated by the state, the victim was deprived of the power to decide the penal consequences of crime. In the course of the transfer of responsibility for redress from victim to state, certain of the victim's interests were accorded formal recognition; in effect, to the extent that they were recognized as consistent with those of the state in preserving public order, etc., the victim's interests were assimilated by the state. There was, in other words, a declaration of symmetry between certain of the victim's interests and those of the state. Other of the victim's interests, lacking formal recognition, were either lost or relegated to other forums for redress.

Thus, for example, there will be support for the victim's interest in having a value recognized or restored to him, whether the physical integrity of his person or his property. Recognition will not be accorded, however, to the victim's interest in renegotiation of his position relative to the offender in the context of a continuing association. The process of abstraction cannot countenance the possibility that the victim might attach a greater value to a determination which provides for some measure of continuing reciprocity or interdependence with the offender.

Moreover, to recognize and support only the victim's interest in his physical integrity is necessarily to ignore his share of the responsibility for precipitating the criminal event. That is, for the victim to be redefined in terms of his representative capacity for demonstration of the value of physical integrity is to ignore those factors which imply some measure of responsibility to the victim for precipitating the event. Issues of reciprocal responsibility must necessarily be excluded from the adjudicative process because such issues do not permit an unequivocal normative reformulation. Only those factors which make a specific and unambiguous contribution to the zero-sum format of the adjudicative process will be permitted entry to the frame of relevance.[20]

The institutional capacity to abstract only those factors which permit redefinition within a zero-sum medium precludes any inquiry into issues

of functional responsibility. Thus, rather than viewing the criminal event as a potentially complex set of interactions involving victim, offender, police and, indeed, the adjudicative apparatus itself, a one-dimensional matrix is imposed on the event: those factors which do not militate unequivocally for the values residing in the normative structures will be blurred or otherwise ignored. The limitations inherent in the structure of the adjudicative mechanism preclude an integrated view of the role of the victim, both in terms of compensation and of recognition of his functional responsibility for the event. The victim has in effect been relieved of responsibility for seeking redress through his own initiatives and, concurrently, of responsibility for his contribution to the criminal event. In the result, the victim becomes a normative and evidentiary vehicle for the demonstration and re-enforcement of societal norms. His role in generating the conflict is ignored because of its resistance to one-dimensional, normative reformulation in the allocation of responsibility; his role in the process of adjudication is restricted except to the extent that he can provide an evidentiary base for assessing the gravity of the offence.

(2) *The Normative Career of the Offender*

Similarly, the other principal in the criminal event, the offender, undergoes a form of redefinition to equip him for his normative career. The structural needs of the adjudicative apparatus to limit the dissensus to some manageable proportions require that the offender's role be assessed within a universe of legal relevance which confines the inquiry to the last link in the chain of events. Those traits which characterize the offender in the immediate context of the criminal event are thus extracted and proclaimed as representative of the whole. The offender is redefined in event-specific terms and thus rendered eligible for an unequivocal allocation of legal responsibility. By locating responsibility with the offender, he is ascribed a legal status which permits his exploitation as a normative vehicle for emphasizing and compelling conformity with the law.

There will normally be a close conjunction of legal and functional responsibility in those criminal events which occur between strangers. The perceptions, legal and functional, which emerge from such events will for the most part be symmetrical as between victim, offender and arbiter. Where, however, the event is itself the product of an escalation of conflict in the context of a continuing association, there must necessarily be a certain disjunctiveness between the arbiter's assignment of legal responsibility and the litigants' perception of functional responsibility.

The allocation of exclusive legal responsibility to an offender who may feel entitled to share causal/functional responsibility with his victim cannot but operate as an impediment to the realignment of that relationship. The

asymmetrical perceptions of responsibility produced by the adjudicative process confer upon the victim a form of licence to ignore his contribution to the criminal event and create the appearance of a normative alliance between victim and arbiter. It is of course a rather limited alliance, as support is extended only to those of the victim's interests which qualify him for his own normative career in the criminal process. The effect is nevertheless to range against the offender both the victim and the monopoly of legitimate force represented by the arbiter. This alignment of forces around an objectivized conflict between professional strangers evokes a corresponding entrenchment and resistance on the part of the offender to acknowledge his responsibility to the victim.

In the result, both victim and offender are redefined in a plane coextensive with the interests of the adjudicative apparatus in securing conformity with its normative structures. To the extent that the interests of the litigants in obtaining a resolution of their conflict are inconsistent with those of the conflict-resolving mechanism, adjudication is inadequate as a medium for participation by those affected by the processes of social decision. It would appear, in other words, that adjudication, as a forum for conflict resolution, is of maximal utility only where there is a symmetry of interests between victim and offender in resolution of their conflict on the one hand, and the adjudicative apparatus in maintaining the primacy of its value system on the other.[21]

6. *Adjudication in the Criminal Process: Ideal and Reality*

The discussion to this point has been premised on the assumption that the criminal process is defined by adjudication. The image conveyed was one in which the parties and their representatives were ranged aggressively against each other, directing the conflict through a construct of adversarial procedures toward a definitive win/loss outcome in a forum designed for zero-sum determinations. Because of the need to impose manageable dimensions on the conflict and to accommodate the problem to the normative options available to the adjudicative mechanism, the conflict zone was necessarily confined to a dissensus over facts or values in the immediate context of the criminal event. These limitations on the frame of relevance created an opportunity for the victim and offender to acquire two divergent and asymmetrical sets of perceptions with respect to their relative responsibilities, legal and functional, for precipitating the criminal event. This differential in perceptions derived from the phenomenon of subordination: the pressures on the adjudicative apparatus to maintain the primacy of its value system tended to subordinate the immediate interests of the litigants in obtaining a resolution of their specific conflict, and to propel the litigants themselves into normative careers. Unless the victim and offender were strangers, however, their normative careers were inclined to be out of phase with their perceptions of

functional responsibility. Moreover, their disjunctiveness was further amplified as their perceptions of responsibility merged with the arbiter's interpretation of legal responsibility. The victim's contribution to the criminal event became legally irrelevant and the offender's became that which could be proved against him. Such career-oriented perceptions of responsibility could not but limit the process' educative potential, particularly with respect to that conflict in which the need was for a reshaping of personal relationships.

In reality, however, adjudication does not define the criminal process. It is instead a system of pre-trial negotiation in which the overwhelming majority of cases are terminated by a plea of guilty.[22] As a consequence, neither issues of functional responsibility, nor, indeed, of legal responsibility are submitted to scrutiny through the application of adversarial procedures. Rather, the recruiting of litigants for normative careers is generally a cooperative enterprise of the professional adversaries, counsel for the crown and counsel for the accused. It is they who negotiate careers for their respective "clients", victim and offender, and present their compromises to the arbiter for formal ratification and imposition of sanctions.[23] Reference to the adjudicative forum often indicates a failure at compromise by the parties to the dispute, particularly if that dispute has been generated from a pre-existing relationship between victim and offender. That such conflict should engage the full range of the adjudicative apparatus by trial, however, generally indicates a failure at compromise by their professional representatives. While the low-visibility of such negotiations precludes precise assessment, it is perhaps a fair statement that virtually all guilty pleas are a product of negotiation, either between police and accused or, where the accused is represented by counsel, between crown and defence: in exchange for forfeiting the option of trial, the accused is granted a reduction of charges or a neutralization of aggravating circumstances.[24]

That the preponderance of occurrences destined for adjudication should conclude by a negotiated plea of guilty, however, does not imply that the conflicit unit has finally succumbed to a resolution through accommodation. Rather, the anomaly is presented of a conflict which has proved intransigently resistent to resolution arriving at the adjudicative forum—a conflict resolution mechanism which structurally precludes accommodation—where a compromise is imposed on it, often by the very actors charged with responsibility for employing the adversary procedures. The adjudicative forum, theoretically incompatible with negotiation, is converted by operational concerns into a forum of justice by negotiation. The cooperation induced, however, is not between victim and offender, but rather between crown and defence in accordance with interests which may be largely independent of the victim and offender.

If the litigants could be said to control their roles in the process, the adjudicative ideal would resemble the zero-sum game. In fact, however, that

control resides with the professional adversaries, with the consequence that the reality of the adjudicative forum more closely resembles the mixed-motive than the zero-sum game.[25] The professional adversaries appropriate the responsibilities for conduct of the litigation, becoming themselves the major protagonists and producing a conflict unit in which the "goals of the players are partially coincident and partially in conflict."[26] Thus, although the adjudicative mechanism is predicated upon an ethic of genuine conflict, there are pressures to negotiate, to accommodate, to cooperate—pressures which derive from needs peculiar to the professional adversaries and their own bilateral relationship. There is, in other words, a factor of inter-dependence built into the logical structure of the relationship between the professional litigants.

The reciprocity between crown and defence is chiefly a product of two characteristics of the prosecutor's role, his quasi-magisterial function and his administrative responsibilities for expediting the work-load of the court.[27] The prosecutor performs a quasi-magisterial function in the sense that he is the last administrative check on police charging decisions and must accordingly assess the propriety of consigning particular cases from the police to the judicial sector. In institutional terms, he is located at the juncture between the operation of the presumption of administrative regularity and the presumption of innocence. It is thus his responsibility to ratify or reject the prior workings of the principle of administrative regularity by which the case was identified as eligible for processing in the judicial sector. To maintain the authority requisite to command this unique position vis-à-vis both the police and the arbiter, it is important that the crown not be seen to lose. At the same time, the crown is not particularly anxious to win if a victory is to involve a full-blown trial. A decision by the defence to contest the issue of guilt by trial represents both an affront to the prosecutor's ratification of the presumption of administrative regularity and a threat to his precariously-balanced workload.

The prosecutor's dependence on guilty pleas thus modifies the traditional role of defense counsel, transforming him from advocate to coach, for his efficiency is in large measure dependent on his understanding of the needs of his professional counterpart in the conflict system. The premium on guilty pleas makes them something of a commodity of exchange, facilitating transactions in which a reduction of charges, either in kind or quantity, or a blurring or omission of the more provocative qualities of the crown's case can be purchased by a plea of guilty.

Thus, even in a conflict system theoretically designed to preclude compromise, there are substantial pressures which make for a "regression to a state of cooperation".[28] The cooperation, however, is achieved by subordinating the interests of the litigants to those of the crown and defence in their

own relationship of bilateral monopoly. These actors will produce a cooperative determination, expressed in a formula compatible with the norms to which the adjudicative apparatus is committed, but one which has nevertheless been re-interpreted and modified by operational concerns peculiar to the professional participants. Apart, therefore, from the theoretical limitations on adjudication which derive from the abstraction necessary to accommodate the problem unit to the mechanism intended for its resolution, there are operational limitations deriving from the pressures on the adjudicative forum and its personnel to cooperate, or if not overtly cooperate, to intervene and supercede the interests of the litigants. In the result, the interests of the litigants will be submitted, either alternatively or sequentially, to at least two levels of abstraction: (1) to effect a redefinition of the parties and their dispute to accord with the conflict ethic of the adjudicative mechanism, and (2) to effect a redefinition of the appropriate normative solution to accord with the operational concerns of the professional adversaries.

7. *Alternatives to the Adjudicative Forum*

Adjudication, then, does not define the criminal process. Trials by battle are unpredictable and consequently pose a threat to the caseload management needs of the professionals in the conflict system. Resort to adjudication is therefore an undesirable outcome from the point of view of the professional adversaries, for their own relationships require that they "strive towards an ever-widening extension of the area of predictability and calculability of results."[29] The trial thus becomes the repository for termination of unsuccessful attemps at pre-trial resolution. In a continuum of conflict resolution mechanisms, adjudication represents the ultimate technique for disposition of those items in the process which have proved resistent to other forms of intervention, or, more significantly perhaps, for disposition of those conflict units which have not had access to legitimate, non-adjudicative forms of conflict resolution.

It is, moreover, problematic whether it is helpful to retain the adjudicative ideal as a paradigm or model with which to define the criminal process. Particularly in the context of continuing relationships between victim and offender, it would appear appropriate to develop forums in which the structure and dynamics of the conflict-solving device do not dictate a subordination of the interests of the litigants, forums in which conflict resolution *per se* has a higher premium than the institutional commitment to maintaining the primacy of its value system. If the adjudicative apparatus must necessarily operate by polarizing and exploiting conflict, it is constitutionally unsuited for the ordering of relationships in which interdependence and reciprocity are part of the logical structure.

Moreover, conflict generated by continuing associations is not the most appropriate vehicle for normative exploitation. If the needs of adjudication

require that victims and offenders be recruited for normative careers, it would be preferable to enlist strangers at the outset, rather than employing adjudicative interventions to create a clientele of professional strangers. Where the criminal event is but one of a multiplicity of connections linking the parties in a continuing association, it suggests the need for conflict-solving mechanisms in which the terms of reference extend beyond the legally relevant and permit conflicts to move toward solutions on other than an impersonal, act-oriented basis. The need, in other words, is for a visible, non-stigmatizing medium which would permit the renegotiation and termination of relationships in a context which alerts the parties to the social significance of their acts and impresses upon them some appreciation of their relative functional responsibility for conflict.

While adjudication is useful, and perhaps essential, for the effective affirmation of societal norms, it is nevertheless a system which is predicated on the assumption that there are irreconcilable differences between the parties. That premise is incompatible with the requirements of relationship-oriented social ordering and suggests that adjudication ought properly be employed only when the need to impose controls on the consequences of conflict compels its invocation. In this light, dyadic conflict within a context of continuing bilateral relationships represents a unique potential for non-adjudicative dispute resolution.

NOTES

[1]In the sense used by Lon L. Fuller in "Human Interaction and the Law", *American Journal of Jurisprudence*, 14-15 (1969-70), 1-36, esp. pp. 2-5, *viz.* to designate a code that develops out of human interaction and the concomitant need to facilitate the prediction of social response; a "language of interaction".

[2]A term adapted by Max Weber, *Law in Economy and Society*, (New York: Simon & Schuster, 1954), 213; employed by David Matza, *Delinquency and Drift*, (New York: John Wiley and Sons, Inc., 1964), 119 to describe a variety of justice most closely approximated by the family court; the judge or kadi operates with an extremely wide frame of relevance in which, in principle, everything matters; and extended in this instance to include primitive clan, tribal or community arbiters.

[3]Lon L. Fuller, "Adjudication and the Rule of Law", in L. Friedman and S. Macaulay, ed., *Law and the Behavioural Sciences*, (New York: The Bobbs-Merrill Company, Inc., 1969), 736-745, at 740.

[4]*Ibid.* Fuller makes the same point in virtually identical terms in "Collective Bargaining and the Arbitrator", *Wisconsin Law Review*, (1963) 3-46, at 19, adding that contracts, elections and adjudication are all forms of social decision in which the affected party is afforded an institutionally guaranteed participation.

[5]Jerome Skolnick, "Social Control in the Adversary System", in *Journal of Conflict Resolution*, 11(1967), 52-70, at 53: [A]ll conflict systems share a similar problem of social control; that problem is conflict maintenance or the control of tendencies toward cooperation."

[6]Lon L. Fuller, "Mediation—Its Forms and Functions", in *S. Cal. Law Review*, 44(1970-71), 305-339, esp. pp. 328-330.

[7]Lon L. Fuller, "Adjudication and the Rule of Law", *supra*, note 31, at 740.

[8]Georg Simmel, *Conflict & The Web of Group Affiliations*, trans. by Kurt Wolff and Reinhard Bendix, (Free Press: London, 1955), at p. 15:

> [T]he vitality and the really organic structure . . . in order to attain a determinate shape, needs some quantitative ratio of harmony and disharmony, of association and competition, of favorable and unfavorable tendencies.

[9]Vilhelm Aubert, "Competition and Dissensus: Two Types of Conflict and of Conflict Resolution", in *Journal of Conflict Resolution*, 7(1963), 26-42, at p. 27.

[10]On this point, see also Lewis A. Coser, *Continuities in The Study of Social Conflict*, (Free Press: New York, 1967) at pp. 20-30:

> "The sources and incidence of conflicting behavior in each particular system vary according to the type of structure, the patterns of social mobility, of ascribing and achieving status and of allocating scarce power and wealth, as well as the degree to which a specific form of distribution of power, resources, and status is accepted by the component actors within the different subsystems. But if, within any social structure, there exists an excess of claimants over opportunities for adequate reward, there arises strain and conflict.... Any social system implies an allocation of power, as well as wealth and status positions among individual actors and component subgroups.... [T]here is never complete concordance between what individuals and groups within a system consider their just due and the system of allocation. Conflict ensues in the effort of various frustrated groups and individuals to increase their share of gratification."

[11]Thomas C. Schelling, *The Strategy of Conflict*, (Oxford University Press: London, 1963), 4.

[12]*Ibid.* The term "pure conflict" refers to a degree of polarization in which accommodation is precluded, with the consequence that a successful outcome is available only to one party, and that outcome must necessarily be at the expense of the other party. The example cited is that of unlimited warfare in which the mutual ambition is total annihilation of the antagonist. As we shall see, however, pure conflict can also be used to describe the position of the antagonists in the criminal adjudication process.

[13]*Ibid.*, 83.

[14]Vilhelm Aubert, "Competition and Dissensus, etc.", *supra* note 37, at 30-31.

[15]*Ibid.*, at 31-33.

[16]Vilhelm Aubert, "Courts and Conflict Resolution", in *Journal of Conflict Resolution*, 11(1967) 40-51, at p. 41.

[17]Oran R. Young, "Intermediaries: Additional Thoughts on Third Parties", in *Journal of Conflict Resolution*, 16(1972), 51-65, at p. 52, n. 2:

> If the intervening third parties are powerful players, for example, the issues involved in the interaction of the original players may be superseded, and the interests of the original players may be overshadowed by the interests of the intervenors.

[18]Thomas C. Schelling, *The Strategy of Conflict*, *supra* note 39, at p. 83.

[19]Stephen Schafer, *The Victim and his Criminal*, (New York: Random House, 1968).

[20]It might well be suggested that this perspective accounts in part for the rather low priority accorded to the principle of compensation in the criminal process. Although the principle is recognized in the Criminal Code and hence can be said to have been accorded formal recognition, the limitations on its theoretical scope and practical application suggest that it is a principle which is not easily accommodated within the adjudicative forum.

Section 653 of the Criminal Code permits an order against an offender convicted of an indictable offence to pay "an amount by way of satisfaction or compensation for loss or damage to property suffered by the applicant as a result of the commission of the offence." The section is limited to property losses from indictable offences, and then only on application by the person aggrieved. Section 663(e) empowers the courts to impose conditions upon an offender if he is placed on probation, one of the possible conditions being that the offender "make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof." Although this provision allows for restitution in cases of bodily injury as well as property loss, it can only be invoked where there is a probation order; moreover, because it is limited only to "actual loss", it is doubtful whether it extends to compensation for pain and suffering.

In any event, these powers are used relatively infrequently by the courts. [See, for example, Professor Allen M. Linden's paper, "Restitution, Compensation for Victims of Crime and Canadian Criminal Law", Law Reform Commission of Canada, Sentencing Project.] The limitations on the scope and use of the powers of compensation and restitution may to some extent derive from the fact that they raise issues of the victim's functional responsibility for criminal events—issues which are not compatible with unequivocal determinations with respect to guilt or innocence. Thus, although such interests may be accorded formal recognition, they may be incapable of reformulation into unambiguous normative terms with reference to specific victims and offenders.

[21]If at this point one should conclude that adjudication should be replaced or supplemented as a mechanism for participation in the process of social ordering, one is apparently assigned to the camp of the "behaviorists". See Herbert L. Packer, *The Limits of the Criminal Sanction*, (Stanford: Stanford University Press, 1968), esp. pp. 12-13, where he characterizes as behaviourists those who see the occurrence of crime as merely one symptom among many that social intervention is necessary; moral fault being incapable of definitive allocation, it is not a factor in the decision to intervene. A somewhat more sympathetic representation is that of Paul N. Savoy in "Toward a New Politics of Legal Education", *Yale Law Journal*, 79 (1969-70), 444-504, at 497:

> A number of psychiatrists, psychologists and sociologists are suggesting that it might make more sense to view the phenomenon of crime as a process of social interaction in which the legal process itself plays a critical role, rather than seeing it as an objectively given form of individual conduct. This kind of perspective would require us to dismantle the entire conceptual apparatus of *actus reus* and *mens rea* and to begin to understand crime not as the behaviour of an individual offender, but as a complex set of offender-victim-police-court interactions.

It should be mentioned, however, that Packer, at p. 245 implicity recognized the criminal process as an instrument of public policy; and at p. 69 he observed that "the singular power of the criminal law resides not in its coercive effect on those caught in its toils but rather in its effect on the rest of us." That effect is seen, at p. 64, as a "complex psychological phenomenon meant primarily to create the conscious morality and the unconscious habitual controls of the law-abiding."

Curiously, however, Packer does not acknowledge the similarity between this position and that of the behaviourists: if deterrence operates unconsciously to eliminate the necessity of a conscious choice between good and evil, this is presumably consistent with the position attributed to the behaviourists, that choice is externally conditioned and that, accordingly, free will is an illusion.

[22]Jerome H. Skolnick, *Justice Without Trial,* (New York: John Wiley & Sons, Inc., 1966), p. 13; John Hogarth, *Sentencing as a Human Process,* (Toronto: University of Toronto Press, 1971), p. 270.

[23]The term "clients" is employed somewhat tentatively in this context, particularly because crown counsel tend to assume a quasi-magisterial posture, representing the interests of the state rather than those of individual complainants. Conversely, it may perhaps similarly be questioned whether defence counsel can be said to represent clients for their professional ethic tends to translate itself more into a commitment to institutionalized processes than a commitment to their clients. Thus, the Barrister's Oath for admission to the Law Society of Upper Canada provides, in part, that "[i]n fine, the Queen's interest and your fellow citizens' you shall uphold and maintain according to the constitution and law of this province". The Cannons of Legal Ethics approved by the Canadian Bar Association provide in Canon 1(1) that the lawyer "owes a duty to the State, to maintain its integrity and its law and not to aid, counsel or assist any man to act in any way contrary to those laws".

It is significant that both the Barrister's Oath and the Canons of Ethics appear to assume a symmetry of interests between the Queen/State and the citizen/client; or, alternatively, in the event of perceived dissonance, the first obligation is owed to the State. For an excellent, if rather blunt, exposition of how these competing obligations tend to be reconciled, particularly in the lower criminal courts, see Abraham Blumberg, *Criminal Justice*, (Chicago: Quadrangle Books, 1967).

[24]See, for example, the observations of Peter Laurie in *Scotland Yard/A Study of the Metropolitan Police*, (London: Penguin Books, 1972), at p. 218: "In the vast majority of cases, the real trial is conducted privately and informally between the detective and the accused in the privacy of a cell, or crouched in the court hall; the decision which they come to is then quickly rubber-stamped by the court, whose only real function is to pass sentence."

It is likely that the British barrister's commitment to his role as an advocate, together with the immunity from his client provided by the solicitor system, reduces the pressures on counsel to make such accommodations; the primary responsibility for negotiation therefore lies with the police. In the Canadian criminal context, the commitment to client representation rather than to institutional processes is slightly greater than in England, and lawyers are accordingly inclined to take a more active role in these negotiations.

[25]Thomas C. Schelling, *The Strategy of Conflict*, *supra* note 39, at p. 89: The Mixed-motive game is one in which there is a "mixture of mutual dependence and conflict, of partnership and competition. . . . It deserves to be emphasized that non-zero sum games can as properly be classed under theory of partnership as under theory of conflict."

[26]P.S. Gallo, Jr. and C.G. McClintock, "Cooperative and Competitive Behavior in Mixed-Motive Games", in *Journal of Conflict Resolution*, 9(1965), 68-77, at p. 68.

[27]Jerome Skolnick, "Social Control in the Adversary System", *supra*, note 33, esp. pp. 57-59.

[28]Skolnick, *ibid.*, at p. 68.

[29]Lewis A. Coser, *Continuities in the Study of Social Conflict*, (New York: The Free Press, 1970), 23.

WORKING PAPER

1975

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Foreword

In developing more detailed proposals on the basis of *Principles of Sentencing and Disposition* (Working Paper No. 3) the Commission has already issued working papers on *Restitution* and *Compensation* (No. 5) and *Fines* (No. 6). The present working paper on Diversion has to be viewed in the context of these other papers.

The Commission has been engaged almost from its inception in exploring and developing the possibility of diversion and has conducted a major experiment which is described in the background volume, "*Studies on Diversion*".

An examination of Diversion and its place in the administration of criminal justice is necessary for several reasons. Too many forms of socially problematic behaviour have been absorbed by the criminal law in recent history and this trend needs to be reversed. One way of doing so is through the process of decriminalization—the elimination of offences. This approach unfortunately has not shown itself to be always successful. Even when offences are eliminated, problematic behaviour often remains, has to be dealt with, and may lead to the use of other charges. Diversion, in this context, represents an approach which recognizes that problems exist and cannot just be defined away but seeks solutions which minimize the involvement of the traditional adversary process and maximize conciliation and problem settlement. The full force of the criminal process can thus be restricted to offences which raise serious public concerns.

The working paper attempts to define the various stages of diversion in order to clarify where and when certain procedures may apply. It concentrates on the pre-trial stage where diversion can be developed as a formalized option. However, it does make the important point that there is a responsibility at each stage to justify the further use of the criminal process. The paper recognizes that behaviour such as fights within the family or between friends as well as certain property offences may or may not be defined as "criminal" depending on available solutions in the community. It also recognizes that the police serves many functions and that they too will define and process some forms of "crime" in the light of their own resources. In many ways the paper attempts to build on the best practices already in use and recommends that these practices be extended and legitimated as viable options in the administration of criminal justice.

In order to structure the process of diversion more formally and more concretely, three things are necessary. First, the practice of diversion needs to be extended and documented within the limits of the present legal framework. Secondly, the Commission is engaged in procedural studies in the pre-trial area, one of which, *Discovery* (Working Paper No. 4), has been completed but others are still in process. Thirdly, before recommending specific changes the Commission needs extensive feedback on the basic outline of Diversion as presented in this paper. Diversion, even more than other measures of disposition in criminal cases, depends on the understanding and cooperation of the public and we therefore urge the public to express its views to the Commission.

Diversion

1. Diversion: A Matter of Restraint

Most criminal incidents do not end up in the courts. Decisions by the victim or a by-stander not to call the police or the exercise of discretion by police not to lay charges, but to deal with the incident in another way, or a decision by the prosecutor to withdraw the charges are as old as the law itself. In some cases, dealing with trouble in a low key is far more productive of peace and satisfaction for individuals, families and neighbourhoods than an escalation of the conflict into a full-blown criminal trial. In resolving conflicts within the family, between landlords and tenants, businessmen and customers, or management and labour, citizens and police have always been reluctant to use the full force of the criminal law. This absorption of crime by the community, police screening of cases out of the criminal justice system, settling of incidents at the pre-trial level, or using sanctions other than imprisonment are examples of what is commonly referred to as diversion.

Underlying diversion is an attitude of restraint in the use of the criminal law. This is only natural for restraint in the use of criminal law is demanded in the name of justice. It is unjust and unreasonable to inflict upon a wrong-doer more harm than necessary. Accordingly, as an incident is investigated by police and passed along the criminal process an onus should rest upon officials to show why the case should proceed further. At different stages in the criminal justice system opportunities arise for police to screen a case from the system, the prosecution to suspend charges pending settlement at the pre-trial level or the Court to excercise discretion to withhold a conviction or to impose a sanction other than imprisonment. At these critical points within the criminal justice system, the case should not be passed automatically on to the next stage. The principle of restraint requires that an onus be placed on officials to show why the next more severe step should be taken.

Placing such an onus on officials would be a departure from existing law and practice in some respects, but it is completely in accord with reason and justice. Since all sanctions are imposed only at a cost in human and financial terms, it is reasonable that such costs should not be imposed needlessly. Instead of automatically proceeding from complaint to arrest to charge, trial, conviction and imprisonment, it makes sense to pause and justify proceeding to the next more serious and costly step. The amendments in the law of bail and provision for conditional or absolute discharge are in

part a recognition of the need to proceed with restraint and to justify further proceedings. Placing an onus on officials to justify proceeding to the next step gives effect to the principle of restraint, encourages diversion in appropriate cases and makes decision to divert visible and accountable.

2. How Broad is the Term "Diversion"?

From what has just been said the term diversion is used to cover programs serving a wide variety of functions:

(1) *Community absorption:* individuals or particular interest groups dealing with trouble in their area, privately, outside the police and courts.
(2) *Screening:* police referring an incident back to family or community, or simply dropping a case rather than laying criminal charges.
(3) *Pre-trial diversion:* instead of proceeding with charges in the criminal court, referring a case out at the pre-trial level to be dealt with by settlement or mediation procedures.
(4) *Alternatives to imprisonment:* increasing the use of such alternatives as absolute or conditional discharge, restitution, fines, suspended sentence, probation, community service orders, partial detention in a community based residence, or parole release programs.

When "diversion" is used to refer to such a wide range of functions as indicated above, care is needed in specifying just what type of diversion is under discussion. No one definition of diversion seems capable of comprehending everything done in its name. It is often said, for example, that diversion is designed to take or keep a case "out of" the criminal justice system. It can readily be seen, however, that this is not always so. In most diversion programs, the client or offender has at least entered the criminal justice system to the extent that the police take action or charges are laid. This is so even where the case is referred by police to such community agencies as hospitals, schools, or children's services. Thus, some persons say that diversion is really any attempt to lessen or minimize contact between the offender and the criminal justice system. Hence, dispositions that serve as alternatives to jail are called "diversion". In this sense diversion is hardly a directing "out of" or "from" the criminal justice system. Only where community organizations, institutions, families, or individuals deal with trouble privately, is there truly diversion "from" the criminal justice process.

Programs designed to improve the capacity of the individual, the family, the school or community to handle its own troubles may be more properly seen as "prevention". A dispute, quarrel or other anti-social conduct should not always be looked upon as an excuse to use the criminal law or

even to refer a case to institutional health or welfare facilities. "Prevention" may often best be accomplished by programs that encourage and strengthen the citizen's or community's resources and capacities to deal with trouble on an informal basis outside the criminal justice, health or welfare systems.

While diversion has been used in some jurisdictions to refer to a policy of minimizing contact with the criminal justice system from arrest through bail, sentence of imprisonment and release on parole, the concern in this paper is with pre-trial diversion. The Working Paper on Imprisonment suggests guidelines for the exercise of restraint in the use of correctional facilities through sentencing and release procedures. As indicated in the next section, diversion operating privately in the community, the school, the shop, or the market place is really absorption or prevention, and as such related to, but outside of the criminal justice system. Police screening and pre-trial diversion are clearly within the scope of criminal dispositions and deserve special recognition at this time.

3. Diversion at what Stage?

(1) *The Community*

To the extent that they are intended to deal with cases without resorting to the criminal justice system at all, diversion programs tend to operate in the community as private systems. For many years, for example, professional bodies have had the power to discipline their own members for offences that could be termed criminal. In more serious cases the offence may be dealt with both by the professional body and the criminal courts. Universities and, above all, schools have a long history of bringing "in-house" offences before their disciplinary boards rather than calling in the police. Large businesses have private security forces and may deal with thefts, frauds and other damage as management problems without referring the matter to the courts. Housing developments, too, are turning to private security forces to handle an array of problems independently of the official criminal justice system. Indeed, private security forces now outpace the police in numbers and growth.

Private security forces, however, do not always absorb conflict or criminal incidents or deal with them independently of the criminal justice system. In some cases large institutions apprehend and investigate minor offences that take place on their premises but use the courts in order to get a final solution. The private security force ends up as a funnel to divert minor cases into the courts. In some cities such an organized use of the criminal courts by industrial or corporate persons adds considerably to the workload of the criminal justice system.

Organized attempts to use community based alternatives to the criminal justice system are becoming increasingly common and are used by police and

others as a means of diverting offenders from criminal processes. Detoxication centres, drug crisis centres, family crisis centres, youth service bureaus and various mental health clinics, among others, offer care, information, advice, counselling or referral services to people in trouble.

As already indicated, dealing with trouble privately is still the norm in our society. Furthermore, unless the power and interest of the state is to be greatly expanded into what has hitherto been regarded as the private realm, no case can be made for expanding criminal processes to include conflict resolution by institutions or private agencies. This is not to deny a public interest in knowing that these private systems operate fairly and are not oppressive to the individuals concerned.

(2) *The Police*

Police exercise their discretion to screen cases out of the criminal justice system. Very often this may be the case with juveniles or young offenders. It is not a new function for the police. They have always exercised a discretion not to lay a charge but take a youthful offender home to his parents and let him go with a warning. Similarly, in some driving offences, cases involving alcohol or drugs, incidents of disorderly conduct, or deviant behaviour suggesting mental illness, among others, the police have used their discretion to reprimand, counsel, mediate or settle cases, or to refer the incident out of the criminal justice system to health, welfare, or other agencies without further action being taken. Such screening is a recognition that the community does not always expect the police or others to deal with minor conflict or trouble through arrest and prosecution.

Is police discretion in screening cases out of the criminal justice system consistent with the ideal of equal justice under law? If A and B come to the attention of the police and the circumstances of the two are not distinguishable, then A and B should be treated alike. If A is screened out it would be unjust to proceed with charges against B unless different circumstances warrant a different disposition. In other words the decision to lay charges in one case and to screen out in the other must have some rational basis that will stand up to examination. The policies upon which the decisions are based should be stated publicly and followed in individual cases. Such policies should, as far as possible:

(a) identify situations calling for charge rather than screening out;

(b) establish criteria for the decision to charge rather than screen out;

(c) require a charging option to be followed unless the incident can be screened out.

Situations that might well be screened out rather than dealt with by charge are identifiable from current police practices, and include among others:

(a) incidents involving juveniles or the elderly;
(b) family disputes;
(c) misuse of alcohol or drugs;
(d) incidents involving mental illness or physical disability;
(e) nuisance-type incidents.

Criteria to be considered in deciding that a charge should or should not be laid might include:

(a) The offence is not so serious that the public interest demands a trial.
(b) The resources necessary to deal with the case by screening out are reasonably available in the community.
(c) Alternative means of dealing with the incident would likely be effective in preventing further incidents by the offender in the light of his record and other evidence.
(d) The impact of arrest or prosecution on the accused or his family is likely to be excessive in relation to the harm done.
(e) There was a pre-existing relationship between the victim and offender and both are agreeable to a settlement.

The assumption is that police and prosecutors should continue to exercise discretion not to lay charges in proper cases, and that such use of discretion should be increased. The equal application of justice under law at this level should be encouraged through the development of express policies and criteria as indicated above. In the background, awaiting the outcome of decisions to charge or not to charge, is the court. It, too can have an influence on pre-trial practices so as to encourage equal justice under law. As indicated later, it is not suggested that the court should supervise or control prosecutorial policy. At the same time, should cases be presented to the court that do not appear proper for prosecution considering the express policies and criteria governing the laying of charges and prosecutions, the court would always be able to enter an absolute or conditional discharge. Thus, indirectly, the position of the court as a back-stop, so to speak, should encourage equal application of prosecutorial and police discretion in laying charges and prosecuting cases.

The Commission is well aware that to ask police forces to screen out cases according to stated policy and guides for decision is to break new ground. It may be difficult and frustrating in some cases to develop such policies or guides. Yet, if the administration of justice is to be visible, fair and accountable, there can be no turning away from this task. Clearly, if the policies and guides are to be workable and fit the reality of the local

community, police forces and crown prosecutors across the country should have an opportunity to share in their development.

The Commission is also aware that carrying out a screening policy with some degree of uniformity and consistency may require additional police resources. Whether the screening should be done at the police station level and whether the additional police manpower should have any special training or experience are questions that deserve consideration.

It should also be noted that if restraint in the use of the criminal process is to be successful at the police level, society must reward police for making screening decisions. At present the incentives and rewards open to police encourage the laying of charges, not screening out. Police forces are judged on their "clearance" rate – how many charges laid. Budgets tend to be tied to the notion of law enforcement and charges laid rather than the less visible social service and screening aspects of police work. Overtime is paid for appearing in court as a witness, and in some cases this can act as a considerable financial incentive to charging and keeping a case before the courts. Not only performance, budgets and payment for overtime but policies for promotion and advancement as well must be used so as to reward, to a greater extent than is now the case, police work and decision-making at the social service and pre-trial level.

(3) *Pre-trial Diversion*

Once a complaint has been laid and carried before a justice of the peace, he endorses the complaint thus converting it into an "information". It is the information which is the basis of the criminal prosecution. Under law, the prosecution of cases is under the control of the Attorney-General. The courts have very little control over decisions by the Crown to proceed with cases, to drop charges, to suspend charges or to enter a stay of proceedings. If the conduct of prosecutions leaves something to be desired, the remedy lies in public criticism in the press or in the legislature. The judicial branch, historically and constitutionally, has been kept separate from the executive branch of government in this respect.

It is the crown prosecutor, then, not the police, who has legal responsibility for laying charges and conducting prosecutions. In practice the day-to-day business of deciding whom to prosecute and on what charge is left to the police. Often the prosecutor will not know anything about a case until he walks into the courtroom and is handed a sheaf of cases for prosecution that morning. If he has time, considering the evidence and the law, he may then decide that the charge ought to be changed or the prosecution discontinued. For the most part, however, experienced police officers have developed a professional expertise in these matters that enables busy prosecutors to delegate to them the day-to-day decisions in laying charges. In

serious cases or cases otherwise raising a doubt, the police will consult the prosecution as to the correct charge. The existence of prosecutorial discretion to select cases for prosecution, to pick the appropriate charge, to vary or withdraw charges, delay or simply stay proceedings is not in doubt.

The principle of restraint should also apply at the prosecutorial level. The proposals for pre-trial settlement in this paper would encourage the Crown to exercise its traditional power to select cases for prosecution in court. While a charge has been laid, is it necessary that the further stages of trial, conviction and sentence be followed in every case? Can some cases be dealt with formally within the criminal justice system, at the pre-trial level, without going any further? On an *ad hoc* basis the Crown, in some areas does withdraw charges upon representations by lawyers for the defence indicating that the accused is deserving of leniency and has agreed to make restitution and pay back the harm done. Particularly where the victim is agreeable to such a disposition, the Crown may then decide that the public interest does not demand a prosecution and agree to drop the charges. Not only in cases of damage to property, but cases revealing an element of mental illness, very youthful or elderly offenders, or cases which under the circumstances are more a social dispute than a major criminal offence, may, with the consent of the victim and the prosecutor, be dealt with by way of settlement. The agreement by the offender in such cases may be to make restitution, to undergo counselling, treatment or to take up training, education or work programs for a stated period.

Such pre-trial settlement or intervention is consistent with the principle of restraint, but in the name of justice and equality deserves to be put on some rational and organized basis. This means that a policy of pre-trial intervention be publicly stated and that such policies, in so far as possible should:

(a) identify situations calling for pre-trial intervention rather than trial; and
(b) establish criteria for the decision to proceed to trial rather than to divert the case for settlement.

It is not likely that pre-trial settlements should be restricted to specific offences such as theft under $200.00, shoplifting, and so on. The labels that we hang on offences frequently cover a very wide range of circumstances. For example, should a young man open his neighbour's door and remove a bottle of Scotch from the table, this is an offence of break and entry as well as theft. In all probability, however, the circumstances would not be so grave as to prohibit a pre-trial settlement providing the neighbour, offender and prosecutor were content with that type of disposition. It is even difficult to rule out offences of violence against the person, for the most common offence in this category is assault. As indicated by the research in East York,

in almost eighty percent of assaults the victim and offender knew each other either in a family context, or in a neighbour or acquaintance relationship. Other data shows that assaults often arise out of drinking or other social situations.

Particularly where there has been a prior relationship between the victim and offender and where such relationship is likely to continue despite the criminal event, pre-trial settlement or diversion may be appropriate. Indeed, the policy underlying pre-trial settlement should permit settlement without restriction as to specific offences, but impose a limitation in those cases where the public interest is so great that pre-trial settlement would depreciate the seriousness of the offence or the general preventive effect of the law.

Inevitably this will mean, to some extent, that in some areas of the country certain events will be thought proper for diversion while in others the same incidents may be proceeded with to trial. This can be objected to on the ground that it does not promote equal justice for all. It should be recognized, however, that equal justice is not an absolute to be pursued to the exclusion of all other values or considerations. If the resulting inequality is not gross it may be worthwhile to put up with it in order to secure other desirable objectives. One such objective in the criminal justice is to permit innovation. Probation, for example, was a direct result of such innovation by the judges and only later did the practice receive legislative recognition. Accordingly, some local variation in rather minor matters should be permitted despite its conflict with the ideal of equal justice under law. Under such a policy it is hardly conceivable that murder, rape, and robbery, for example, would be diverted to pre-trial settlement. The public interest in these types of cases is very high and, even if the victim and offender were agreed that under the circumstances such an offence could be dealt with without going to trial, other values would weigh in favour of public prosecution. The administration of justice is to some extent a local matter and ought to reflect local values and encourage innovation, but not at the expense of larger social interests.

In order that the decision to divert certain cases for settlement be visibly fair and accountable, however, criteria for guiding the pre-trial settlement decision should be developed. In most areas of the law affecting individual liberty or property, where it is possible and feasible to do so, the policies and criteria governing decision-making are articulated and written down. This becomes even more important should pre-trial settlement become an official part of criminal dispositions, as we recommend, and its administration is to be above charges of discrimination or partiality. If pre-trial settlement were made visible, and broad criteria of eligibility and procedure were introduced, risk of unequal exercise of discretion would be reduced. There would be a better understanding of why discretionary

decisions are made and the purposes of the criminal law would become more clear and satisfying to participants and observers alike.

The danger exists that in attempting to reduce practice to writing, the resulting guidelines will be unrealistic. This in turn may distort existing practices and produce pressures on officials to ignore the guidelines and return to their former practices. Experience with the Bail Reform Act is an illustration of the need to proceed with the help and experience of police and others in trying to capture discretionary practices and write them down as guides to future action.

In attempting to give express recognition to police or prosecutorial discretion not to proceed with a case, one problem arises from the nature of police and prosecution work itself. As with other institutions, criteria for decision-making are to some extent shaped by the internal workload, working conditions, and policies of the organization itself. Criteria for police or prosecution use in screening or diverting cases may not be particularly focussed on the victim as the Commission thinks they should be. Rather, the demand to get the job done on time, or to handle the case in such a way as to obtain recognition or promotion, reporting requirements, or the shortage of manpower may all have more effect on the decision to proceed with a case than the more ideal purposes of criminal justice. Another factor that may inhibit police in using discretion in this regard is the fear of public criticism that the discretion is exercised on an improper basis.

Keeping in mind the necessity for sound police screening practices, the need to give a role to victim and the community interests in dispositions and the need to take advantage of police and prosecutorial experience, the following factors may be useful in developing a set of guidelines for pre-trial diversion programs:

(a) the incident being investigated cannot be dealt with at the police screening level;
(b) the circumstances of the event are serious enough to warrant prosecution, and the evidence would support a prosecution;
(c) the circumstances show a prior relationship between the victim and offender;
(d) the facts of the case are not substantially in dispute;
(e) the offender and victim voluntarily accept the offered pre-trial settlement as an alternative to prosecution and trial;
(f) the needs and interests of society, the offender and the victim can be better served through a pre-trial program than through conviction and sentence;
(g) trial and convictions may cause undue harm to the offender and his family or exacerbate the social problems that led to his criminal acts.

It should be emphasized that none of these criteria would affect the existing power of the prosecutor to withdraw charges or affect the power of the court to dismiss charges, should the prosecution be resumed, or to enter an absolute or conditional discharge.

(4) *The Court*

At a fourth stage the principle of restraint in using criminal processes and sanctions can be exercised by the judge. The court has a very wide power to impose a sentence other than imprisonment such as absolute or conditional discharge, restitution, fine and probation. In addition, other community based sanctions deserve consideration such as community service orders. While community based sanctions will be the subject of another Commission Working Paper, it may be useful to make one or two observations at this point. While judges may say that they do presently exercise restraint and imprison only as a last resort, it is difficult to assess that position. First of all in sentencing we have not developed good data collection. Judges do not get good statistical feedback on their sentencing practices, nor can they compare them with sentencing practices in neighbouring courts. For example, while we say that in cases of possession of marijuana few are prosecuted and almost none go to jail, yet in 1973, approximately 800 young persons were imprisoned for this offence in Canada. Thousands of others were not. What made the 800 cases an exception? Good data collection would enable us to give an explanation. Imprisonment is supposed to be used as a last resort, but the most recent published data by Statistics Canada, on an all-Canada basis showing imprisonment in cases of summary conviction under the Code is for 1968. It shows that for some assaults, obtaining food and lodging by fraud, and other minor offences, from 10 percent to 38 percent of dispositions were by way of imprisonment. Can the principle of restraint be made more effective by established policies, standards and guidelines for judges in sentencing, followed up by efficient data collection and feedback on sentencing practices?

In addition, isn't there room for sanctions enabling convicted persons to work, and in some cases to use part of the wages for restitution to the victim? If surveillance is necessary in some cases, can greater use be made of community residential centres and week-end detention so as to enable the offender to continue his job and maintain constructive links with the community?

At the court level the principle of restraint, as the Commission states in its Working Paper on Imprisonment, requires a more careful application, particularly in the use of imprisonment. In Canada there is a high rate of imprisonment compared to other countries. In addition, we usually send persons to prison not because of crimes of violence, but because of

convictions for property offences, offences against the public order or other offences not involving violence to the person.

Almost fifty percent of men imprisoned in provincial and federal institutions are imprisoned for non-violent offences against property. Most of these persons are young, unemployed or underemployed at the time of the offence and rather poorly educated. Among these non-violent offences, the average loss in individual offences is below $200.00 and a $500.00 "haul" represents a big case. About 50 percent of the victims in these property offences resulting in jail terms are not individuals but corporate bodies: businesses, schools, or institutions. Fourteen percent of first offenders convicted of a non-violent offence against property go to jail. Fifty percent of second offenders in this category go to jail.

At the same time we realize the limits of imprisonment in reducing recidivism. The deterrent effect of sanctions generally is perceived to be low and not surprisingly so when it is realized that in non-violent offences, the percentage of crimes cleared by police is low. The deterrent or educative effect of the criminal law is probably found in the certainty of arrest and publicity of the process rather than the increased severity of imprisonment as compared to a community based sanction.

If imprisonment is restricted to those whose crimes pose a serious risk to the life or limb of others, to those whose crimes are so reprehensible that deprivation of liberty is the only adequate response, or to those who refuse to pay fines or comply with other voluntary sanctions, then we must contemplate sentencing many more men to community based dispositions.

Such dispositions might well address themselves not only to the question of restitution to the victim and adequate supervision in the community but to the equally important question of upgrading the offender's economic and social skills. This will mean a substantial increase in the demand for community based health services, job training programs, work, counselling, residential and other social services. This is not to suggest that community based dispositions will greatly reduce crime, but simply to suggest it probably is less wasteful, less destructive of human dignity and more likely to bring improvement in individual cases than imprisonment. For the victim, community based dispositions should at least bring restitution and compensation, and society will likely find that its interests and security are reasonably protected as well.

If we are prepared to have an increase in community based dispositions, it becomes important to see whether community resources can handle this change in practice. Specifically, are there programs available in the community for supervising offenders in doing work such as cleaning up waste from public areas, assisting the elderly in clearing snow from sidewalks, and so on? Are there sufficient counselling services to give young people advice

and training in life skills, in making job applications and holding a job? Are there enough family counselling services, psychiatric services or job training programs?

Not only is there a need for the local community to do an inventory of its services and organized programs available to the court or police, there is a need as well to consider the adequacy of the delivery system. Is it enough simply to have an office downtown or a telephone number in the book? Are there sufficient personnel, volunteers as well as paid professionals, to see that these services are used to advantage by offenders?

4. Issues in Pre-trial Settlement

While the Commission is of the view that restraint in the use of the criminal law should be exercised at each of the four stages of the criminal process, particular attention in this Working Paper will be given to the relatively new suggestions for diversion in the form of pre-trial settlement.

This alternative disposition should be consistent with the values and principles set out in earlier Commission Working Papers, particularly Working Paper No. 3, The General Principles of Sentencing and Dispositions. One of the prime values society seeks to promote is the freedom and dignity of individual members of society. This value is promoted through law, including the criminal law which is called in by way of support only as a last resort. In using the criminal law, however, restraint is needed in order to maximize freedom and human dignity within society. Diversion is desirable to the extent that it maximizes such freedom and dignity, and it will tend to do so where the criteria already referred to are met and where the processes of the criminal law are used with restraint and directed towards the reconciliation of the offender with the victim and society. Finally, diversion should be formalized to the extent that it is necessary to achieve procedural fairness in the making of decisions to divert and to the extent that such decisions be visible and accountable.

In the light of these values and other considerations, the Commission offers the following outline as a basis for discussion.

While encouraging the development of sound police and prosecutorial discretion not to charge, there should also be room for mediation or settlement of some cases after charges have been laid. In all cases the court would be available as a backstop to divert through discharge those cases that may have been brought up for prosecution despite their apparent eligibility for pre-trial diversion.

Pre-trial settlement decisions ought to be under the control of the Attorney-General through the crown prosecutor. Since it is undesirable to build up another correctional bureaucracy at the pre-trial level, it is suggested

that once the decision to divert the case for settlement is made, the case be referred out to a community agency or service. It would be the responsibility of the agency to bring the victim and offender together and work out a suitable settlement. Preferably, the settlement should take the form of a written agreement or contract clearly setting out the terms to which the offender is bound. The agency would also be responsible for seeing that the contract was carried out and reporting to the prosecutor on the progress of the case. If the offender failed to carry out the agreement, the prosecutor would have to be satisfied that there was a wilful default and be prepared to make a decision to resume criminal proceedings against the offender. If the contract were satisfactorily performed, the prosecutor would withdraw the charges. On the basis of this proposed model some particular issues should be examined.

(1) *Should a Charge be Laid?*

If the criminal law processes are to be used with restraint, pre-trial settlement procedures should not depend on vague allegations of wrong-doing, delinquency or deviant conduct. As growth in pre-trial settlement programs continues, there is a real risk that police screening practices will be relaxed and large numbers of persons who formerly would have been dealt with outside the criminal justice system will now be brought into formal pre-trial diversion programs. Were this to happen it would be unfortunate. While the criminal justice system, including any proposed pre-trial settlement program, may have a general deterrent or a general preventive effect, its use for this purpose or for the purpose of rehabilitation must be exercised with restraint. Indeed, as indicated in earlier working papers, the best way of dealing with some offences may often be to do as little as possible. For this reason it would be unfortunate if pre-trial diversion were used as a means whereby a larger and larger proportion of people in trouble were discouraged from handling their own problems and encouraged or obliged to turn to state-run criminal justice programs.

One way to reduce court intake of minor offences would be to decriminalize certain offences. Yet to take certain conduct right out of the criminal law does not always result in a satisfactory solution. The objectionable conduct remains to be dealt with somehow by health or social welfare law, or by private suit in civil court or, perhaps, through insurance. To the extent that conduct does remain within the reach of the criminal law, however, one way of ensuring that pre-trial diversion schemes do not needlessly bring individuals into the criminal justice system is to require that a charge be laid.

The requirement of a charge would also make it easier to put teeth into a pre-trial settlement law. If the settlement agreement breaks down it may be desirable to resume criminal proceedings. Laying the charge prevents any

limitation date from running out, and the charge also lays the basis for informed consent.

(2) *Should Consent be the Basis of Pre-trial Settlements?*

Recognition of the inherent dignity of man and his capacity to make choices affecting his welfare, and the need for reconciliation between victim, offender and society require that pre-trial settlements be based on consent—the consent of the victim, that of the offender and of the Crown.

In the interests of justice, neither victims nor offenders should be denied the right to have the case go forward to the court. As a general rule the victim, as citizen, should not be denied his right to lay a private information even if the Crown does not think the case merits a public prosecution.

Even where prosecutorial policy is not to proceed with charges in certain types of cases, as in family quarrels, or shoplifting, for example, the complainant might still be left with the opportunity to lay a private information and proceed on his own in the criminal courts. Under present law, however, the Crown is able to take over or suspend such private prosecutions. In addition, unnecessary prosecutions may be tempered by the power of the court to grant an absolute discharge. The fact that restitution or settlement was offered by the offender, but refused, would thus be a factor to be considered in sentencing and dispositions.

Nor should an offender be denied the opportunity to plead not guilty and seek an acquittal in the courts. At the same time, serious cases should not be hidden from public prosecution simply because the victim and offender prefer a private settlement. The Crown in the public interest may well decide that the case is one that should be heard in the criminal court.

What kind of consent is adequate for a diversion program? Is it sufficient, as in probation and parole, to ask the offender whether he agrees to such a disposition without taking much time to explain what is involved? The extent to which safeguards might be expected in the matter of consent, must, in part, be measured against the risks involved or the rights to be waived by consent.

At present, if complaints of criminal wrong-doing are brought against an accused by police, he has a right to know specifically what offence is alleged; it is not enough to make vague references to delinquency or anti-social conduct. In addition, if the accused is arrested he has certain rights to bail, and if he is detained in custody he must be brought before a magistrate within twenty-four hours or within a reasonable time. Upon being questioned by police, the accused, in general, need not give answers but if he does, subject to the required warning about evidence being used against him,

there is no general right against self-incrimination. Accordingly, whereas the consent of the offender to enter into a diversion or settlement agreement makes sense from a correctional or rehabilitative point of view it carries important legal implications for the accused, particularly in so far as it may affect his right to a trial, or encourage him to waive his right to remain silent. In addition, under present law, despite any undertaking the Crown may give, any statements made in the course of the pre-trial settlement would probably be admissible in criminal proceedings at a later stage.

It goes without saying, that to be voluntary the choice should be made in full knowledge of the facts and of the possibility of charges being resumed should the accused not fulfil his obligations under the program. In other words, a pre-trial diversion program should be based on an intentional, intelligent and voluntary participation by the accused. It is probably not essential to the notion of fairness that an informed waiver of rights be made in open court; it is probably sufficient that the offender be fully advised of his rights in an informal out-of-court appearance.

It should also be fairly clear that a voluntary decision is more likely to be assured where the accused is advised by competent counsel. In this way, persons who feel that they were in no way responsible for the trouble or offence complained about might question the sufficiency of the evidence and avoid being pressured into settlement to avoid a criminal prosecution. No pressure should be put upon the accused to secure his entry into a pre-trial program but, realistically, it may be impossible to prevent persons consenting to a pre-trial program even though they may feel they have done no wrong. No doubt some persons plead guilty in criminal courts now, just to avoid the hassle and delay of a contested trial. Good police work, professional prosecutors and availability of defence counsel should reduce this risk to a minimum.

Objections can be raised against consent on the ground that the choice between pre-trial settlement or trial is not free but induced. The issue, though, is not whether the choice is "free" but whether the choice was presented under oppressive circumstances. It is not the offering of choices to an accused that arouses concern, but the offering of choices under oppressive or unconscionable circumstances.

(3) *Should the Offender be Required to Admit Responsibility?*

Entry into a pre-trial settlement program should not be conditioned upon an admission of "guilt", but on an informal admission of the facts alleged against him. While seeking a guilty plea may be explained as a means of getting the accused to accept his responsibility in the matter and hence an element in his rehabilitation, the same end may be achieved by less drastic means. All that is needed is an informal and out-of-court acknowledgement of

partial or full responsibility for the harm complained about. In addition, to require a pre-trial admission of "guilt" overlooks the fact that it is mediation and settlement, not adjudication, that is needed in some cases and that is why they are considered for pre-trial settlement in the first place.

(4) *How are Cases to be Terminated?*

If pre-trial settlement takes place after a charge is laid, the Crown is in control of the proceedings. It is the responsibility of the Crown then to decide whether or not a case has been successfully completed. If the settlement has been successfully completed, the charges should be withdrawn. While there is nothing in present law to require withdrawal of charges in such a case, in practice the prosecutor would, no doubt, give such an undertaking at the time the pre-trial option was offered to the offender. In this connection an amendment to the law barring prosecution on the same charges or the relaying of charges may help to engender confidence in the kind of pre-trial settlement proposed here. As indicated later, present law does nullify charges that are not proceeded with, but this in itself may not be a sufficient safeguard.

Unsuccessful cases may present greater problems. If the prosecutor is satisfied that the settlement contract has not been completed, what recourse should he have? First, as in fines, it is only in cases of wilful default that the issue of further sanctions should be of importance. Assuming an inexcusable default on the part of the accused, what should be done? Nothing at all? Should the contract be sued on as in civil cases? Or should the Crown resume criminal proceedings against the accused?

There is much to be said for doing nothing at all. Considering that a prior decision would already have been made that the case was not one of such general public importance as to warrant a criminal trial, how much weight should be placed on the fact that the offender does not keep his promises and has not made redress? The chances are probably 50-50 that he won't be heard from again in any criminal matter. If he is proceeded against, his very default is likely to be held against him at time of sentence and lead to a more severe sentence than the original offence may have warranted.

At the same time, there is much to be said for the view that an offender should not simply be allowed to get away with it. If something must be done, is it feasible to enforce the pre-trial settlement contract by using the civil courts? Those who have tried to sue defendants and collect damages in the civil courts may well be skeptical of the right to sue. Typically, offenders are men of little financial means, so that even if a default judgement were obtained, it might not be worth very much. In addition, unless the expense of suing in the civil courts were borne by the Crown, the costs would be a chilling prospect for most victims. Thirdly, the unfamiliarity with enforce-

ment procedures in the civil courts will doubtless act as a deterrent to some victims who then would be left "holding the bag". Offenders, realizing that the law has no teeth, would be tempted to abscond or pay little attention to their obligations under the pre-trial settlement agreement.

Simply doing nothing or relying on civil enforcement does not seem to be satisfactory. While compliance with pre-trial settlement contracts may be expected in the majority of cases, some offenders will not discharge their obligations unless they are made to. In probation, this problem has usually been met in two ways. Wilful failure to comply with the terms and conditions of an order is itself a separate offence, alternatively the defaulting offender can be re-sentenced on his original conviction. On balance, the option of resuming criminal proceedings in the event of a wilful breach of a pre-trial settlement order would probably be desirable.

If proceedings are to be resumed in such a case, what provision should be made for those cases where the offender denies he was in default? In parole, at present, a parole contract may be terminated by the Parole Board and no reasons need be given. As the Commission makes clear in its Working Paper on Imprisonment, however, release procedures having a direct effect on the liberty of the offender ought to be taken fairly. It follows that the decision to terminate a pre-trial settlement contract and to resume criminal proceedings should also be seen to be fair. Among other things, this should mean providing reasons for the termination when requested, and permitting a challenge to the factual basis upon which the decision to terminate was made. In practice, such provisions for fairness are not likely to mean substantial delays in proceeding with cases. As in parole, most offenders are likely to be well aware of any difficulties that may be developing in respect of the pre-trial order and will probably have had various warnings from a supervising officer before the decision to terminate is made.

(5) *Is there "Double Jeopardy"?*

Where breach of a pre-trial settlement order is followed by a decision to terminate the order and resume criminal proceedings, does the offender stand in double jeopardy? Acknowledging that there are various aspects to "double jeopardy", it can hardly be said that to resume criminal proceedings in such circumstances violates the notion that a man should not be charged twice for the same offence. Instead, it is a case of suspended charges being resumed.

What would be regarded as unfair and contrary to public policy would be a resumption of criminal proceedings following a successful completion of a settlement or diversion order. Should such a travesty of justice take place there is probably nothing in existing law to remedy it, except the jurisdiction inherent in the court to prevent an abuse of its process. It is doubtful, however, whether the courts have extensive authority to supervise prosecu-

torial practices to forestall a miscarriage of justice and to secure the confidence of accused persons contemplating diversion. As indicated earlier, there should be a legislative statement providing for a withdrawal of charges and barring further prosecution for that offence once the pre-trial diversion program is successfully completed.

(6) *Is there a Right to a Speedy Trial?*

If charges are laid but suspended during the course of a pre-trial program, can the offender complain that he is being denied his right to a "speedy" or early trial? Such a complaint is difficult to imagine where the accused has voluntarily chosen to enter into the very program that was designed as an alternative to trial. Unlike the United States, Canada offers no constitutional right to an early trial. The law, however, does encourage prosecutors to get on with a case involving a stay of proceedings, for the stay is limited.

(7) *Will the Rules of Evidence Apply at Pre-trial Settlements?*

To the extent that the rules of evidence are designed to keep some kinds of evidence out of the court, there should be no problem. These rules are useful in the adversary process of the court battle but in a mediation or settlement procedure they may find less rigid application. Other adjudicative or settlement forums in labour law, family law or administrative law do not appear to have much trouble in determining what evidence is relevant and material to the issues at hand without getting caught up in the formal rules, or hopelessly lost in irrelevancies.

To the extent that the rules of evidence would permit statements made in the course of a pre-trial settlement to be used against the accused in later criminal proceedings, there is cause for concern. If the policy of the law is to encourage settlements and the keeping of promises, it ought not to be undermined by an unrestricted rule permitting admissibility of statements made in the course of a settlement. This may be ensured by leaving a discretion with the judge to exclude evidence under certain circumstances as outlined in the Commission's Working Papers on Privilege in the law of evidence.

(8) *Will the Accused in a Pre-trial Settlement Have a Criminal Record?*

It is essential to distinguish between what police do in order to keep track of convictions and what employers and others do in asking "do you have a criminal record? ". Most persons would concede that it is useful to the administration of justice for police to keep a record or file showing persons convicted in the courts and that information showing previous convictions

should be available at time of sentence. On the other hand, many people do think it undesirable to discriminate against a person in employment or business practices generally, simply because, at one time, he or she was convicted of an offence.

In pre-trial settlements it will only be common sense to collect basic data on the cases that are dealt with. This does not mean that discrimination in employment practices, for example, should be ignored. Accordingly, the laws relating to criminal records should be reviewed to take into account those persons who may have been charged but diverted to a pre-trial settlement.

(9) *How to Assure Equal Consideration in Diversion?*

How can equal consideration in diversion be assured? What assurance does an accused have that his case has been fairly and properly considered for pre-trial settlement? Rather than think in terms of a "right" to diversion, it may be more helpful to consider the position of the accused at sentence generally. For example, for years the policy of the law has been to encourage the use of probation, particularly in the case of first offenders. This does not give the first offender a "right" to probation, but the policy does require the judge to consider probation as an alternative to imprisonment and does require that a decision to impose imprisonment in such a case be justifiable.

Dispositions, whether pre-trial or after conviction, should be made openly according to stated policy and within express guidelines. In this way decisions become open and accountable. They are made accountable in the sense that the decision may be challenged as being inconsistent with the stated policy or guidelines or made in complete disregard of them. That is, the decision should be open to review, much as some parole and correctional decisions should be open to review.

(10) *Should Pre-trial Settlements be Conducted in Public?*

One of the great assets of our system of law is that trials must be public. Some inroads have been made on this principle in cases of juvenile delinquency and reporting is restricted in some other circumstances. On the other hand, pre-trial negotiations have usually been conducted behind closed doors. A pre-trial settlement, however, involving as it does some stigma and some acceptance of responsibility in the face of a criminal charge, is not a run of the mill pre-trial procedure. The public are entitled to know what harm was done not only to the victim but also to the community. To this extent it is necessary that the circumstances be made public knowledge. It can be said, too, that a public hearing is necessary in order to make sure that the offender or victim is being treated fairly in the settlement process.

While a great deal of weight must be given to the view that decisions be open, visible and accountable, it does not necessarily follow that the actual

process of settlement be conducted in public. The decision to divert to settlement should be public and accountable. Yet the actual working out of the agreement can hardly be done under the glare of television cameras. In labour law and family law, settlements are usually arrived at in lawyers' offices or in some semi-private atmosphere. The decision whether or not to divert those cases involving a high public interest would be a public one. Once the case is designated as suitable for pre-trial settlement, however, it is difficult to see a high public interest in the actual give and take of the settlement process. Since the proposed scheme also depends upon the consent of the victim and offender and contemplates the availability of counsel, it is not likely that individuals could be abused by a settlement arrived at in the semi-private atmosphere of a voluntary agency, for example. On balance, therefore, the Commission is of the view that the decision to divert to pre-trial settlement be open, visible and accountable, but that the actual mediation or settlement process be permitted some degree of privacy.

(11) *Will Diversion Programs Save Us Money?*

The claim is frequently made that diversion is cheap. It is said to be cheaper to use a pre-trial settlement than to proceed to court and conviction. It is said that it is cheaper to use a community based sanction such as probation than to use imprisonment. Such arguments sound plausible. Yet the difficulty of accurately assessing the cost of any program or service in criminal justice is great.

Certainly diversion programs, if they are to be successful, will require the expenditure of large sums of money in new areas, while reducing the demand for services in other parts of the criminal justice system. More money will have to be spent on justice training programs for one thing and increasing staff at the prosecutor's office. Increased demands will be made upon the community for services including probation, child welfare, family counselling, manpower training, special education of different kinds, and medical or health services. Already, probation, for example, or counselling through drug and alcoholic addiction agencies in some communities are overloaded.

To some extent increased manpower requirements in some of these services may be met through increased use of volunteers. Yet volunteers need places to work, professionals to assist and give guidance and resources to work with.

Diversion programs will not solve the problems that lead some people to crime; it will only make it possible to see those problems more clearly and come to grips with them at the community level. Diversion makes it possible for our responses to crime to be more rational, informed, open and selective. Yet it all depends on governments supporting the community and its agencies to make that intelligent response in a timely way.

Conclusion

The continuing interest in diversion is fed by many sources. There is a growing disappointment with an over-reliance on the criminal law as a means of dealing with a multitude of social problems. At the same time we realize that rehabilitation does not provide a full answer to the problem of crime. Increasingly, it is recognized that crime has social roots and sentencing policies must take into account not only the offender but the community and the victim as well.

As research throws more and more light on what actually happens in the name of criminal law, it becomes clear that the court and correctional processes are not able to deal well with many of the cases brought to their doors. The adversary processes of the court are not able to deal adequately with cases that require mediation or settlement. The correctional institutions cannot easily offer services and help that is community based. The victims and offenders and witnesses who are exposed to the criminal processes frequently find them impersonal, frustrating and difficult to understand.

Research also makes it clear that most of the conflict or trouble that could be called "criminal" often is absorbed by the family, the school, the place of work or other branches of community life. Police work is deeply involved in diversion, in finding health and social service solutions to problems that might otherwise end up in courts. Prosecutors have a wide discretion to decide that certain cases be settled at the pre-trial level rather than automatically processed for trial. Increasingly, these practices and others are being given formal encouragement through official programs and projects or through legislation.

There is a need to examine diversion then, not only because it is already upon us and is often the norm but also because diversionary practices can give rise to greater satisfaction between victims and offenders. The general peace of the community may be strengthened more through a reconciliation of the offender and victim than through their polarization in an adversary trial. To put the matter another way, there is a need to examine diversion at this time if only to discover again that there is much value in providing mechanisms whereby offenders and victims are given the opportunity to find their own solutions rather than having the state needlessly impose a judgment in every case.

For these and other reasons, diversion programs have grown up without much direction or control in various jurisdictions and are currently the centre of attention. Yet, in so far as diversion is seen to be an alternative to imprisonment, it may be an illusion. As indicated in the Commission's Working Paper on Imprisonment, if we are to reduce the jail population many property offenders now being imprisoned will have to be sentenced to alternative community based dispositions. Many diversion programs, however, are located at the pre-trial level and are directed to juveniles or young offenders involved in delinquency or near-delinquency that ought not to warrant imprisonment in any event.

Diversion is also seen by some persons not only as a means of reducing imprisonment but also of keeping offenders out of the criminal system in the first place. This, too, may prove to be an illusion unless the principle of restraint is exercised. Under existing law and practice, incidents involving delinquency or other minor trouble are absorbed by the community or dealt with by police and prosecutors without charges being laid or without going to trial. The cases are screened out; they are referred to parents, agencies or hospitals or they are settled informally and are not characterized as criminal in nature. The danger is, then, that thoughtless development of diversion programs will have the opposite effect to that which is intended: they will result in greater, not less, exposure to the criminal justice system. Accordingly, it will be important to ensure that diversion to pre-trial settlements draws upon cases that would otherwise have gone to court. Even then there is a danger that pre-trial diversion will attract only cases that otherwise would have been dealt with by dismissal, conditional or absolute discharge or probation.

The diversion to pre-trial settlement of some young persons would provide an opportunity to engage them in paying restitution, as well as involving them in job training, employment, counselling or training in "life skills" that so many of them lack. As an additional benefit, diversion encourages the community to participate in supporting the criminal justice system to a degree that was not always possible under the trial model. Professionals, para-professionals, ex-offenders and ordinary citizens are encouraged to join the delivery of services to the criminal justice system, for the diversion programs rest upon a community base.

An advantage of diversion procedures is the scope they offer for participation by the victim in resolution of the trouble or harm complained about. If there has been a continuing relationship between victim and offender as is the case in many crimes against the person or property, a procedure which enables the parties to come together and with the help of a mediator arrive at a mutually satisfactory settlement is to be preferred in some cases to the adversarial nature of the court trial.

As already indicated, setting up diversion programs will entail risks. Unless police and prosecutorial screening practices are understood and made visible, there will be the temptation to divert for pre-trial settlement difficult cases that would otherwise have been dealt with without charging. It is important, therefore, that diversion be firmly grounded on sound sentencing principles and governed throughout by the principle of restraint with the onus on officials to justify proceeding with a case to the next more serious level.

Despite the risks involved, the advantages of a pre-trial diversion or settlement mechanism from the point of view of society, the victim and the offender alike warrant encouragement. A pre-trial program, based upon the consent of the parties, operating according to stated policies and express guidelines for decision, and run under the supervision of the prosecution by competent administrators supported by community service programs is recommended. Fairness in procedure is important and to this end it is recommended that the procedures be open and accountable. Counsel should be available to ensure that accused persons fully understand what they are consenting to.

Undoubtedly, legislation would encourage the development of pre-trial diversion programs, although other means such as policy statements or declarations of intent may also serve this purpose. In any event, it is clear that it is useful to gather as much experience as possible before being fully satisfied with any such official statements of policy and direction. In addition, diversion will make a heavy call upon community services and will require increases in personnel and budgets.

To conclude, it appears that the criminal law and its processes are a last and limited resort in dealing with social conflict. When it is called upon to deal with conflict and trouble, the criminal law and its sanctions should be used with restraint, and decisions to proceed with criminal processes should be fair, visible and accountable.

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